DOCTOR OF PHILOSOPHY

The Expansion of Counter-terrorism in the EU Post-9/11
The Development of EU Aviation Security

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List of Diagrams.

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Declaration.

I declare that I, Briony Elspeth Callander, am the sole author of this thesis.
The work of others has in all instances been properly cited and unless stated all references have been consulted by the author.
The work of which the thesis is a record has been performed by the author alone.
This thesis, and the work of which it is a record has not been previously accepted for higher degree.

Briony Elspeth Callander
29th December 2015

List of Abbreviations and Acronyms.

AA	American Airlines
ACI-Europe	Airports Council International - Europe
AQAP	al-Qaida in the Arabian Peninsula
ATC	Air Traffic Control
AVSEC Panel	Aviation Security Panel, ICAO
ATB	Air Transport Bureau, ICAO
BOAC	British Overseas Airways Corporation
CAPPS	Computer-Aided Passenger Pre-screening
CCTV	Closed-Circuit Television
CFSP	Common Foreign and Security Policy, EU
CIA	Central Intelligence Agency, US
Coreper	Committee of Permanent Representatives, EU
CP	Critical Parts of an Airport
Commission	European Commission
DfT	Department for Transport, UK
DG-ENTR	Directorate-General Enterprise & Innovation
DG-HOME	Directorate-General Home Affairs
DG-MOVE	Directorate-General Mobility & Transport
DG-TREN	Directorate-General Transport & Energy
Doc 30	Document 30, ECAC
EC	European Community
ECA	European Cockpit Association
ECAC	European Civil Aviation Conference
ECSC	European Coal & Steel Community
EDD	Explosive Detection Dogs
EDS	Explosive Detection Systems
EEA	European Economic Area
EOS	European Organisation of Security
EP	European Parliament
ESDP	European Security and Defence Programme
ETA	Basque Homeland and Freedom

ETD	Explosive Trace Detection
EU	European Union
EUR/NAT	European and North Atlantic Office, ICAO
FAA	Federal Aviation Administration, US
FARC	Revolutionary Armed Forces of Colombia
FIS	Islamic Salvation Front
FYROM	Former Yugoslav Republic of Macedonia
GIA	Armed Islamic Group
GIGN	National Gendarmes Intervention Group
GSAT	General Security Awareness Training
G7	Group of Seven
HHMD	Hand Held Metal Detector
HMTD	Hexamethlene triperoxide diamine
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
IED	Improvised Explosive Device
IFALPA	International Federation of Airline Pilots' Associations
IGO	Inter-governmental Organisation
IRA	Irish Republican Army
LAGs	Liquids, Aerosols and Gels
LCD	Lowest Common Denominator
MANPADS	Man Portable Air Defence Systems
MEP	Member of the European Parliament
MS	Member State of the EU
NASP	National Aviation Security Programme
NATO	North Atlantic Treaty Organisation
NQCP	National Quality Control Programme
OMC	Open Method of Cooperation
Pan Am	Pan American World Airways
PFLP	Popular Front for the Liberation of Palestine
PLO	Palestinian Liberation Organisation
PNR	Passenger Name Records

QMV	Qualified Majority Voting
RAF	Royal Air Force, UK
SAC	Security Advisory Committee, IATA
SACEUR	Supreme Allied Commander of Europe, NATO
SAGAS	Stakeholder's Advisory Group on Aviation Security
SAMs	Shoulder to Air Missiles
SaRPs	Standards and Recommended Practices
SPE	Supranational Policy Entrepreneurship
SRA	Security Restricted Area
STEB	Sealed Tamper-Evident Bag
The 9/11 Commission	The National Commission on Terrorist Attacks upon the United States of America
TIP	Threat Image Projection
TOT	Tools of the Trade
TSA	Transport Security Administration, US
TWA	Trans World Airways
UACES	the University Association for Contemporary European Studies
UAL	United Airlines
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
US	United States of America
USSR	Union of the Soviet States of Russia
WMD	Weapons of Mass Destruction
WTMD	Walk Through Metal Detector
1WTC	North Tower of the World Trade Center
2WTC	South Tower of the World Trade Center
9/11	Tuesday 11 September 2001

Abstract.

This thesis is concerned with the European Union's (EU) twenty-first century expansion of its counter-terrorism remit to include aviation security. The specific focus of the PhD is to examine the cause and effects of this development by considering the first decade of this new political competence. In doing so it fills a conspicuous gap in the literature – the absence of scholarly works on the role of the EU in aviation security especially those considering both the internal and external dimensions of this. It contributes to numerous areas of the existing literature specifically the fields of aviation security, counter-terrorism and EU politics. The thesis utilises a tri-fold theoretical framework consisting of: agenda setting and focusing events, neofunctionalism and spill-over, and supranational policy entrepreneurship (SPE). Both documentary analysis and elite interviewing are used to form the basis of the empirical analysis. The thesis considers the origins, development and organisation of the new competence. It also examines the EU efforts and the results of these – both in terms of the resulting policy output and the practical application of it. The findings of this enables the thesis to cover the issues of the creation of EU common basic standards, the commitment to compliance monitoring, the relationship between security and facilitation and the EU's place as an aviation security actor in the international system.

1--Introduction.

1-1--Justification of the research topic.

This thesis is concerned with a particular aspect of the EU's twenty-first century expansion of its counter-terrorism remit. In the wake of the 11 September 2001 (9/11) attacks the EU began involvement in aviation security, a highly technical subject of which it had no experience. Given the globally inter-linked nature of aviation security, however, EU aviation security has effects outside the borders of the Member States. This resulted in the addition of a supranational dimension to part of the previously inter-governmental system.

Terrorism as a phenomenon - which has been shown to be both never ending and always changing, continually evolving - is an ever present, undeniable threat in the modern era - especially to the security of international civil aviation. Given how dramatically different the 9/11 attacks were to all incidences of terrorist attacks that had come before and how serious the consequences of them were, counter-terrorism must evolve in order to deal with this new threat. Therefore, international security - both of civil aviation and also in the wider sense - is required to change. Whilst it is necessary to learn lessons from the past, it is important to concentrate on the future, preventing a repeat of the most recent attack should not come at the expense of preventing the attack of tomorrow. Successful international cooperation is vital.

Aviation was originally a matter for the individual state. However, towards the end of the Second World War, the great powers had begun to realise the importance and benefit of international consensus on matters of regulation. Thus in 1944 the International Civil Aviation Organisation (ICAO) was created. When aviation security became an issue at the beginning of the 1970s this too came under the purview of ICAO. As aviation is an international industry, it is developed and regulated at an international level. In contrast, it is controlled at a national level. The standards and practices developed by industry bodies and trade organisations are implemented by the organs of national governments. Aviation regulation has operated on this two-

tier model since it began with the birth of international organisations. The system remained so in to the twenty-first century - regulations were set by the organs of the international community such as ICAO, but were implemented and controlled by national governments. All matters of aviation function around the clear and simple relationship between the individual nation state and the various international organisations.

Aviation security upon its inception in the 1970s was no different. Prior to 9/11 this also held true for the Member States of the EU. Aviation security was, as a matter of sovereignty, a national competence – ICAO and the other international organisations could recommend standards and practices but had no power to enforce implementation. This was the prerogative of the individual state. In the post-9/11 era, however, the situation changed – the EU saw integration in aviation security occur with the European Commission (Commission) obtaining a new competence over aviation security. The growth of aviation has significantly expanded the scope of duties and issues covered by the international organisations. As a result of which, an intermediary step in the established relationship has evolved. This is the creation of regional committees by the international organisations largely for administrative purposes. There has, however, not been the creation of a tertiary level in the established system detailed above. This, therefore, complicates the issue of how aviation (and in particular the specific area of aviation security) is regulated and controlled with respect to supranational or inter-governmental institutions, such as the EU. It is to be noted that this thesis is only interested in civil aviation security rather than the security of military aviation, and commercial rather than general aviation. As such, when the thesis mentions aviation security it should be assumed to mean commercial aviation security.

1-2--The evolution of aviation security prior to 9/11.

This section looks at what threats aviation security is concerned with. By examining the various threats it has faced, it shows the evolution of aviation security over the

years. This is in order to more fully explain what aviation security is. It must be noted, however, that this section is not meant to provide an exhaustive list of all attacks against aviation, as the sheer quantity is prohibitive given the space available for the thesis. Rather specific instances are considered demonstrating the various manifestations of the threat. These were selected by relevance; to either the development of aviation security measures concerned with airport security, the EU geographically, or for their illustrative capability of the nature of aviation security as a concept.

Aviation terrorism dates back to the early days of commercial aviation and was in its first incarnation concerned with the hijacking of aircraft or more correctly 'skyjacking'. It has been suggested that hijacking and skyjacking are not synonymous as commonly thought. Rather they refer to different forms of aerial piracy determined by the assertion 'that a hijacker is a qualified pilot competent to take over the controls, and a skyjacker is a passive rider dependant on the flight crew' (St John, 1991: 191). The earliest recorded instance is that of an attempt in 1930 by Peruvian revolutionaries to skyjack a mail plane so as to drop propaganda leaflets over the capital. There is no record of any consequence of this incident other than a fiscal reward given to the pilot for his bravery (Wallis, 1993). The Chicago Convention of 1944 was the founding charter of ICAO and the basis of most aviation legislation. It did not cover any form of unlawful interference however as 'no one foresaw such threats and the need to address them' (ICAO, n.d.b.).

The period of 1947 to 1958 included a number of notable incidents. In 1947, the first fatal skyjacking occurred. 1948 saw not only the first skyjacking for criminal rather than political purposes but also the first aircraft to crash due to air piracy. In 1950 the first multiple skyjack occurred. Despite this no action was taken by either the aviation industry or governments to counteract skyjacking. The majority of skyjacks during this period were committed by Eastern Europeans hoping to escape communism and seek political asylum in the West (Arey, 1973; Phillips, 1973). St John argues that a lack of action by Western governments led to more skyjacking.

> … the West regarded them as heroes and celebrated their actions without punishment. In the early years the only real crime was the theft of the airplane

> itself. As a result, planes were usually returned, but the killing of pilots and air crew went unpunished for political reasons' (St John, 1991: p. 7).

The political change in Cuba which occurred when Fidel Castro became President caused an unparalleled surge in skyjacking. As a result of this escalation governments and international bodies began to take action. 1958 to 1961 began with Castro's rebel forces skyjacking to disrupt the elections and gain power. Later Cubans who favoured the ex-President Batista used skyjacking to escape to political freedom in the US. During 1968 to 1972 however, aircraft from the US were skyjacked to Cuba. This was due to the hostile relations between the two countries, there was no transport from the US to Cuba, so many Cubans who wished to return home, resorted to skyjacking. As a result of this escalation, governments and international bodies began to take action. In 1963 an ICAO treaty on hijacking, the Tokyo Convention, was signed although it was not ratified until 1969. The US and Cuba began negotiations through the International Air Transport Association (IATA), that led to a US-Cuba hijacking agreement being signed in 1972. Both the US-Cuba agreement and the Tokyo Convention, however, dealt only with the expedient return of skyjacked aircraft and passengers (Arey, 1973; St John, 1991).

1968 saw both the first skyjack for political extortion. Also the same year, the first instance of non-skyjacking aviation terrorism occurred - an armed attack against aircraft on the ground (Merari, 1999). 1970 saw the first attack against aviation related property other than aircraft or airports: that of the headquarters building of an airline (Phillips, 1973). Also in 1970, in an unprecedented move, the Popular Front for the Liberation of Palestine (PFLP) committed a multiple skyjack which at the time was considered 'the most remarkable event in the history of aerial piracy' (Phillips, 1973: 140). On Sunday 6 September two aircraft: Trans World Airways (TWA) Flight 741 from Frankfurt to Tel Aviv, and Swissair Flight 100 from Zurich to New York, were successfully skyjacked. The TWA and Swissair flights were flown to Dawson's Field – a remote former Royal Air Force (RAF) airstrip near Amman in the Jordanian dessert (Wallis, 2003).

A third flight, El Al flight 219, from Zurich to New York, was also part of the plan but the attempted skyjack failed. The two PFLP members who attempted the El Al skyjack were prevented by onboard sky marshals, one was shot whilst the second was captured. The flight then diverted to London Heathrow where the surviving terrorist was arrested by British authorities and held in custody (Wallis, 2003). The other two PFLP members who were supposed to have made up the Flight 219 team failed to board the El Al flight. Instead they booked onto a Pan Am flight, Flight 93 from Amsterdam to New York, which was subsequently successfully skyjacked and flown to Cairo. The skyjackers were obviously not prepared for the Pan Am flight to be a Boeing 747 (more than two and a half times bigger than anything else in the air), upon taking over the aircraft they realised that it was too big to land safely at the desert airstrip. So they instructed the pilot to fly to Beirut, refuel and hold there whilst they received instructions from PFLP members on the ground. The PFLP then discussed numerous Middle Eastern airports suitably equipped to receive a jumbo and finally settled on Cairo (Arey, 1973). Upon the Pan Am flight reaching Cairo, all passengers were immediately allowed to go free and the aircraft was destroyed with explosives (Phillips, 1973).

The PFLP then gave a deadline of 0300 hours on Thursday 10 September for their demands: an unspecified number of Arabs to be released from Israeli prisons, the captured El Al skyjacker to be released from the UK, and the release of six PFLP members being held prisoner in Munich and Zurich for acts of terrorism against aviation targets. In an attempt at containing the situation, King Hussein of Jordan, had troops and armoured vehicles of the Royal Jordanian Army move into place, effectively ringing the airstrip. By noon on Monday 7 September, a deal was struck that the PFLP would allow one hundred and twenty-seven women and children to be taken off the aircraft and moved to Amman where they would be more comfortable. However, they would remain hostages as the PFLP would retain their passports, and no Israeli's or Israeli-American dual citizens would be included. This was on the condition that the Jordanian troops pulled back a distance of two kilometres. Both sides duly complied (Arey, 1973).

The following day, the five governments to whom the PFLP made their demands (Germany, Israel, Switzerland, the UK & the US) set up a coordinating committee that became known as the Berne Five. Through an intermediary, they presented in person to the PFLP the offer that they would release all seven named prisoners in return for the release of all hostages. The PFLP rejected the offer and instead held a news conference for reporters who had driven out from Amman. Whilst the PFLP undeniably appreciated the publicity for their cause, this was not the principal reason for the press conference. It was hoped that the television footage of the hostages held in the desert, when shown around the world, would put pressure on the Berne Five to deal individually (Arey, 1973; Phillips, 1973).

On Wednesday 9 September, to reiterate their determination and to strengthen their position the PFLP conducted another skyjack. Up until this point the PFLP had led the UK to believe it had British Nationals as hostages who would be exchanged for the prisoner being held in London. The PFLP saw that they were having to put additional pressure on the governments for whom there were hostages, and saw that the UK would not be forced to deal without a considerable bargaining chip (Arey, 1973). This time it was the British Overseas Airway Corporation (BOAC) Flight 775 from Bahrain to London, which upon skyjacking was flown to Dawson's Field. On arrival twenty-three of the passengers were released completely: twenty-one Arabs, one Persian and his British girlfriend. With the arrival of Flight 775 at the airstrip, the PFLP extended the deadline to the early hours of Sunday morning, to allow the Berne Five to take stock of the changed situation and re-evaluate their position. However, despite this development Britain, Germany and Switzerland maintained they would release the seven prisoners, but only if all the hostages were released (Arey, 1973; Phillips, 1973).

At this point the Palestinian Liberation Organisation (PLO) became involved, restating the PFLP's demands on behalf of the PLO as a whole and announcing the following compromise. The hostages would be transferred from the airstrips to Amman, all but Israeli citizens of military age would be released as soon as the PFLP were informed Germany, Switzerland and the UK were releasing the prisoners. In

addition, all crew and aircraft would be handed over once the seven prisoners had arrived in an Arab country. The Israelis however would be detained until a number of Arab prisoners were released. Again this was left vague, however, as it was clear only Israelis were being held on this condition, the PFLP hoped the other three governments would be less inclined to remain united as part of the Berne Five and may deal separately (Arey, 1973: Philips, 1973). The involvement of the PLO had negative consequences – eighteen passengers from the TWA aircraft were secretly taken from Dawson's Field on the Friday night by the skyjackers who hid them in Zerka. The PFLP members at the airstrip felt that their leaders were weakening their resolve and that they needed to fortify their position themselves. The following morning leaders in Amman had the majority of the passengers brought in from the airstrip. This had the PFLP members at Dawson's Field very agitated, and as a final show of strength and defiance, they destroyed all three aircraft with explosives (Wallis, 2003).

The skyjackers then allowed all but thirty-eight Israeli passengers (including five women) to be taken to the hotel in Amman. The remaining hostages were split up and hidden in houses around the city. The PFLP members refused to divulge their locations (including to the PLO and PFLP leaders) stating only that the hostages were safe and comfortable. They also insisted they would continue to be kept in secret locations until all prisoners were released. As time went by, King Hussein himself believing the PFLP had gone too far, became worried that if the stand-off between the PFLP and the Berne Five was to continue, the latter may attempt to use force to free the hostages. On 15 September the Jordanian Army moved against guerrilla groups in the capital. A civil war then ensued, after ten days Hussein's troops had defeated the guerrilla groups and the fighting ended. All hostages were then fully released, at which point the Berne Five kept its word and released the seven named prisoners (Arey, 1973; Phillips, 1973; Wallis, 2003).

The Dawson's Field spectacle should be considered to be an incident of major importance for a number of reasons. Not only because it constituted a dramatic development of the threat requiring aviation security to change significantly, but

also due to the unprecedented nature and magnitude of the attack, which remained unparalleled until 9/11. Furthermore, whilst there are many differences between the two attacks, the basic principle was the same: the coordinated commandeering of multiple aircraft by a single group.[1]

The 1970s was not only a significant evolutionary period for the threat to aviation but also aviation security. ICAO passed the Hague Convention for the Suppression of Illegal Seizure of Aircraft in 1970, declaring skyjacking to be a criminal offense that was extraditable (St John, 1991). The Montreal Convention for the Suppression of Unlawful Acts of Violence at Airports Serving Civil Aviation of 1971, declared the same as the Hague Convention for any action that endangers the safety of persons at airports. The Montreal Convention also covered attacks against aircraft both in flight and on the ground (Hill, 1989).

One of the most important actions during this period was the official creation of aviation security. This occurred when the Chicago Convention was amended in 1974 to incorporate the newly created 'Annex 17 – Security'. The first version of Annex 17 focused on skyjacking which was at the time considered to be the pre-eminent threat. Annex 17 called for the

> … modifying [of] existing technology and applying agreed upon specifications and procedures, [through which] the worldwide aviation community established a reasonably effective screening system for passengers and their carry-on luggage (ICAO n.d.c.: 32).

The International Federation of Airline Pilots Associations (IFALPA) also became involved in trying to curtail skyjacking, by refusing to fly to airports in countries that were perceived to allow or condone aerial piracy. In 1978 the Bonn Summit, a meeting of government leaders from the seven Western industrial powers (the UK, the US, Canada, Germany, Japan, France & Italy) took place. This gave rise to the Bonn Declaration in which all countries present 'agreed to impose sanctions against any state that supported or cooperated in the hijacking of aircraft' (ICAO, 2009).

[1] These can be summarised as the intentions of the perpetrators: the PFLP saw Dawson's Field as a means to an end – a negotiating tactic, whereas al-Qaida saw 9/11 as end in itself – a crushing blow to the enemy. Also, whilst the PFLP were willing to destroy property they endeavoured to avoid loss of life. Al-Qaida, however, pursued maximum disruption, destruction of property and death by using the hijacked aircraft to cause collateral damage beyond the passengers.

By the 1970s American registered airlines had been targeted more frequently than those of any other nationality. It is therefore unsurprising that early attempts at airport security originated in the US. The US passed a law defining air piracy and detailing subsequent punishment, which was the first national legislative act against aviation terrorism. The first approach to airport security consisted of six measures designed to work in parallel to provide an all encompassing system, many of which are still used today (St John, 1991).[2]

The introduction of security measures, however did not cause skyjacking to cease, there were three hundred skyjacks between 1977 and 1986, and two hundred and twelve between 1987 and 1996 (Merari, 1999). Also, the 1980s saw an increasing number of fatalities as a result of skyjacking. From the 1970s onwards aviation terrorism appeared to take a new direction with sabotage becoming more prominent than skyjacking. Between 1969 and 1999 there were more than seventy known attempts to sabotage aircraft in-flight with explosives. Twenty-four exploded in mid-air, fifteen of which resulted in fatal crashes and nine were able to land safely albeit with fatalities in some instances. The remaining thirteen exploded whilst the aircraft was still on the ground. All other attempts were either foiled by the device being found, or were defective and the device failed to detonate (Jenkins, 1999).

Between 1947 and 1996 there were only one hundred and five instances of attacks being carried out against aircraft through bombing as opposed to nine hundred and fifty-one skyjackings during the same period (Merari, 1999). The number of incidents of sabotage compared to skyjacking would contradict the previously stated view that sabotage was more of a threat than skyjacking. The respective loss of life attributed to each method of attack, however, is incontrovertible evidence

[2] These were: 1) the introduction of sky marshals on international flights deemed to be at risk, 2) a system of electronic surveillance and screening for both passengers and baggage, 3) screening of passengers through profiling to narrow down suspicious persons, 4) air and cabin crew were instructed to develop policies of resistance to skyjackers, 5) the FAA authorised crews to carry firearms if they passed competency requirements, 6) consultation with foreign counterparts, especially in the realm of information sharing.

that supports the above theory. For the aforementioned period of 1947 to 1996, the percentage of fatalities resulting from attacks against aircraft through bombing is nearly seventy-four per cent rather than only nineteen per cent due to skyjacking (Merari, 1999). Until the mid-1980s, aviation security was still primarily concerned with skyjacking. After two devastating incidents in the latter half of the decade the focus shifted onto sabotage. The figures stated above however show that one did not preclude the other. This stable door mindset of dedicating energy and resources to prevent a reoccurrence of the last threat, contributed to the tendency to focus on the past at the cost of the future.

One act of sabotage that had the biggest impact on aviation security was the loss of Air India's *Kanishka* in 1985. An improvised explosive device (IED) caused the aircraft to crash resulting in three hundred and twenty-nine deaths, which was the largest loss of life to occur as the result of a single incident to date and remained so until 9/11. The result was the incorporation into ICAO's Annex 17 of an IATA developed security standard: that of full passenger and baggage reconciliation becoming mandatory (Jenkins, 1999). This is regarded as the most significant change in international aviation security standards in the 1980s.

In 1986, a TWA flight suffered an explosion that ruptured the aircraft. One passenger was killed instantly when the device detonated under his seat and three others were sucked from the aircraft and fell to their deaths. Had the bomb been placed differently or had the aircraft not been at such low altitude the destruction would have been such that the aircraft would not have been able to land, resulting in a significantly higher loss of life (Wallis, 2001). Subsequent investigation found the bomb was planted by a passenger who deplaned at a transit stop, where the aircraft had been searched sufficiently to meet industry requirements. As a result of this, IATA recommended all airlines should include the lifting of seat cushions during searches at transit stops (Wallis, 2001).

In 1987, a Korean Air flight crashed killing one hundred and fifteen. This was the result of an IED smuggled on board in hand luggage by passengers who deplaned at a transit stop (Wallis, 1993). The outcome

> was an instruction from the Council of ICAO to its Committee on Unlawful Interference to advise on changes needed to security procedures to control the movement of transit (by which they also mean transfer) passengers and for the detection of explosive substances' (Wallis, 1993: 19).

It is clear from the TWA and Korean Air incidents that new ideas on aviation security came in response to terror attacks that previously occurred rather than from considering possible future threats. It is also evident that the reactions lacked the necessary strength. Instead of recommendations and instructions to advise, new mandatory procedures should have been developed.

In 1988, Pan American World Airways (Pan Am) aircraft *The Maid of the Seas* designated Flight 103, exploded over the Scottish town of Lockerbie whilst en route from Frankfurt to New York via London. This caused the deaths of all two hundred and fifty-nine on board, and eleven residents of the town when burning wreckage fell on their homes. The Scottish Fatal Accident Inquiry found that the aircraft was destroyed by an IED hidden in an unaccompanied bag. One of the most jarring aspects of the Lockerbie tragedy was that those responsible used the same method as the perpetrators of the *Kanishka* bombing (Wilkinson, 1999: Wallis, 2001).

The steps taken by both international organisations and the US aviation authorities which were designed to prevent such a tragedy reoccurring, were invalidated by the decision of the airline not to implement them (Jenkins, 1999; St John, 1991; Wallis, 1993; Wallis, 2001; Wallis, 2003; Wilkinson, 1999). At the time, airlines were only required to implement practices which were mandated by relevant authorities, not those that were merely recommended. Wilful refusal to implement standards developed to prevent previous tragedies occurring again, not only compromises the integrity of the aviation security system, but also shows a high disregard for the safety of both passengers and the airlines own staff. This led to the first instance of an airline being found guilty of negligence, which occurred during a consolidated liability lawsuit brought in New York in 1991 by the families of the victims (Wallis, 2001). Whilst Lockerbie was not the biggest loss of life through aviation terrorism

'the shock value of the destruction of flight 103 was incredible. It galvanised the whole system of airport security worldwide' (St John, 1991: 66).

An effort to further improve security came after Britain suffered criticism regarding Pan Am's practices at London Heathrow in respect to Lockerbie. It became mandatory that all airlines using British airports including foreign carriers conformed to British standards. Unfortunately, despite this international aviation security did not improve sufficiently with enough speed to stop further incidents. One hundred and seventy-one died in 1989 when a Union de Transports Aerions flight exploded (Jenkins, 1999; Wallis, 1993; Wallis, 2001). Also in 1989 an Avianca flight crashed as a result of sabotage killing one hundred and seven (Wallis, 1993).

In 1991, the British Government's Department for Transport (DfT) introduced a new security standard which mandated the full screening of all checked luggage. At the time the screening methods in place had been developed to prevent weapons being carried that could be used in a skyjacking. The UK had become aware that the current screening practices such as metal detectors and x-ray systems were incapable of detecting modern explosives. In 1993 trials were initiated at Abbotsinch Airport which used a new screening system of 'smart' dual energy x-ray and computer tomography (Wallis, 2003). This was a three tiered system mounted over the current baggage handling system, which operated as follows:

- The first stage was automated: the machine identifies baggage that meets specific parameters contained in its memory including mass, atomic weight and contiguity.
- Stage two involved an operator using colour enhancement on a visual display unit connected to a scanning machine to allow for more detailed examination of the target object.
- The third stage involved conventional vapour detection to test for explosives contamination.

After successful completion of the trials, the screening system was gradually voluntarily introduced at airports across the UK, and even by some European airports (Wallis, 2003).

On Saturday 24 December 1994, Abdul Abdullah Yahia and three fellow members of the Armed Islamic Group (GIA) hijacked Air France flight 8969 prior to take-off. The four men boarded the flight at Houari Boumediene Airport, Algiers disguised as Air Algerie employees armed with assault rifles and pistols. The hijackers closed and locked the aircraft doors, took control of the cockpit then killed an Algerian policeman and a Vietnamese diplomat to demonstrate their resolve. The Algerian Interior Minister attempted to negotiate with the hijackers from the control tower, who demanded the release of Abassi Madani and Ali Belhadj, two Islamic Salvation Front (FIS) leaders imprisoned under house arrest by the Algerian government. The hijackers subsequently changed their demands from the release of the FIS leaders to being flown to Paris. When the Algerian authorities refused the hijackers killed a passenger stating they would continue to do so every thirty minutes. The French authorities demanded the Algerians allow the plane to depart, and it flew to France landing at Marseilles supposedly for refuelling. The hijackers then demanded almost three times the amount of fuel required to fly on to Paris. The information that the hijackers possessed dynamite was provided to the authorities by some of the passengers whose release had been successfully negotiated in Algiers. The French Consulate in Oran had also obtained the information that the hijackers planned to use the aircraft as an aerial bomb over Paris. The National Gendarmes Intervention Group (GIGN) stormed the aircraft killing all hijackers (Global Jihad, 2009; Sancton, 2001; Sof, n.d.; Wallis, 2003). There has over the years been considerable speculation that the terrorists intended to detonate the aircraft by crashing it in to the Eiffel Tower, however this remains unproven. Whilst the terrorist's planned attack was unsuccessful, the hijacking of Air France flight 8969 is notable. It not only reiterates the continued attraction of aviation as a target for terrorism but also demonstrates that terrorists will not restrict themselves to one method of attack, highlighting the need for security efforts to consider the whole range of threats.

In 1995 a terrorist plot named 'Operation Bojinka' was foiled when police discovered records as a result of an apartment fire. The plot was masterminded by Khalid Sheikh Mohammed and consisted of three main components. Two targeted

aviation, the other was the assassination of Pope John Paul II. The first was the causing of an explosion by crashing an aircraft into a strategic land-based target: the Central Intelligence Agency (CIA) headquarters building in Langley, Virginia. The other aspect to the plot involved Ramzi Yousef, who in December 1994 conducted the bombing of Philippine Airlines flight 434 from Manila to Tokyo via Cebu. Yousef placed a bomb in the life jacket under his seat and deplaned at Cebu, where a Japanese businessman boarded and took the seat Yousef had just vacated. When the bomb exploded it killed the passenger in the seat and ripped a hole in the floor of the aircraft. Despite the explosion, however, the crew were able to maintain enough control of the aircraft to manage an emergency landing. The bomb was made from components designed to pass through airport security: digital wristwatches, light bulb filaments, nitro-glycerine disguised in contact lens solution bottles and nine volt batteries which were hidden in the hollowed out heel of a shoe. This was a dry-run in preparation for the coordinated bombing of twelve transatlantic flights. When questioned by US law enforcement officers, Khalid Sheikh Mohammed claimed that in addition to the aerial bombings, he had considered hijacking and crashing commercial aircraft into targets such as; the White House, the Capitol Building, the Pentagon, CIA and Federal Bureau of Investigation (FBI) headquarters, the Sears Tower, the World Trade Center, nuclear power plants and the tallest buildings in the states of California and Washington (Wallis, 2003; 9/11 Commission, 2004; 9/11 review, n.d.). Despite the bombing of flight 434, Operation Bojinka was not, at the time, widely regarded as a notable incident. The plot was successfully foiled, the perpetrators apprehended and only a single fatality occurred.

With no major incidents occurring since the beginning of the 1990s, and with security procedures becoming so developed, complacency settled in. This is another reason why the industry was so woefully unprepared for 9/11. Having never been proactive, and without any new stimulus for reaction, anticipation of a evolved future threat was at an all time low.

1-3--9/11 and the continued development of the threat.

The 9/11 attacks consisted of the coordinated suicide hijacking of four commercial aircraft on US domestic flights: American Airlines (AA) flights AA11 and AA77, and United Airlines (UAL) flights UAL93 and UAL175. Nineteen operatives of al-Qaida, armed with box cutters not only caused the deaths of thousands of people but also the injury of hundreds of thousands more by crashing airliners full of passengers and laden with enough fuel for a cross country flight, into buildings considered to be strategic targets.

The National Commission on Terrorist Attacks upon the United States (9/11 Commission) was established by President George W. Bush and the 107th Congress (Public Law 107-306, 2002). The legislation required that it

> [e]xamine and report upon the facts and causes relating to the terrorist attacks of September, 11, 2001, occurring at the World Trade Center in New York, New York, in Somerset County, Pennsylvania, and at the Pentagon in Virginia (Kean & Hamilton, 2006: 14).

The 9/11 Commission consisted of ten Commissioners, five Republican and five Democrat, and eighty-one members of staff who 'reviewed more than 2.5 million pages of documents and interviewed more than 1,200 individuals in ten countries … [and] held 19 days of hearings and took public testimony from 160 witnesses' (The 9/11 Commission, 2004: xv). The 9/11 Commission Report provides the following information regarding 9/11.

On Tuesday 11 September 2001, Mohammed Atta and Abdul Aziz al Omari boarded a 06:00 flight from Portland to Logan Airport, Boston. At check-in at Portland, Atta was selected for additional security measures by the Computer Aided Passenger Pre-Screening (CAPPS) system. The only consequence of being selected by CAPPS, however, was that of being subject to positive bag-matching: the passenger's bags are held back from being loaded onto the aircraft until the passenger presents for boarding. At Logan, Atta and al Omari joined company with Waleed al Shehri, Wail al Shehri, and Satam al Suqami. Suqami, al Shehri and al Shehri were then selected

by CAPPS. All five passed through security at Logan, which was operated by Globe Security under contract to AA without incident. AA11 was scheduled to depart Logan Airport, for Los Angeles at 07:45. At 07:59 it took off with the Captain, First Officer, nine cabin crew and eighty-one passengers onboard. At 08:14 the last routine communication with the ground took place in the form of the AA pilot acknowledging navigational instructions from the US Federal Aviation Administration (FAA) Boston Air Traffic Control (ATC) Centre. It is estimated that it was at this point that the takeover of the plane occurred, with the hijackers using knives, irritant spray and the threat of a bomb. One of the cabin crew onboard the flight called the airline, where an employee notified the FAA's Boston ATC Centre. United 93 (2006) demonstrates that the FAA's Boston ATC Centre had already speculated that AA11 might be a hijacking as they had been trying in vain to contact the aircraft for several minutes after having received a suspicious transmission. The 9/11 Commission (2004) found this had occurred when the terrorists in the cockpit accidently transmitted to ATC while attempting to talk to the passengers in the aircraft cabin. On receiving this confirmation that AA11 was indeed a hijacking, the Boston ATC Centre informed the FAA's National Command Centre in Herndon, Virginia. This started the attempt to defend the US airspace that

> was not conducted in accordance with pre-existing training and protocols. It was improvised by civilians who had never handled a hijacked aircraft that attempted to disappear, and by a military unprepared for the transformation of commercial aircraft into weapons of mass destruction (The 9/11 Commission, 2004: 31).

AA11 was to become the first suicide hijacking of a commercial aircraft when piloted by Atta it crashed into the North Tower of the World Trade Center (1WTC) in New York at 08:46. 1WTC subsequently collapsed at 10:28.

UAL175 was also a flight between Logan and Los Angeles, with a scheduled departure time of 08:00 however due to the heavy morning traffic it was also delayed. Take off was at 08:14 with the Captain, the First Officer, seven cabin crew and fifty-six passengers onboard. These included; Marwan al Shehhi, Fayez Banihammad, Ahmed al Gandhi, Hamza al Ghamdi and Mohand al Shehri. None of them were selected by CAPPS and all of them passed through security screening, which was operated by Huntleigh USA under contract to UAL, without any issue. At

08:42 the last routine communication with the ground occurred when UAL175 reported that they had overheard a suspicious transmission as they were climbing out of Logan. It is within the following five minute period that the hijack is considered to have taken place, again the terrorists were armed with knives, irritant spray and the threat of a bomb. At 08:47 UAL175 changed beacon codes twice within one minute which was followed at 08:51 by the deviation from the flight plan. United 93 (2006) shows that with AA11 having hit 1WTC, and the confirmation that the suspicious transmission stated planes plural rather than plane singular, it was this suspicious behaviour that caused UAL175 to be considered a hijack. The 9/11 Commission (2004) determined that both Boston and New York ATC Centres were trying to re-establish contact when al Shehri crashed UAL175 into the South Tower (2WTC). Despite being hit last, 2WTC was the first to collapse at 09:59.

Upon checking in at Washington Dulles airport for the AA77 to Los Angeles, Hani Hanjour, Khalid al Mihdhar and Majed Moqed were all selected by CAPPS. Nawaf al Hazmi and Salem al Hazmi were also selected for additional security measures by the airlines staff at check-in.[3] The only consequence of these selections was once again limited to positive bag matching. The security screening checkpoint was operated by Argenbright Security under contract to UAL which was the responsible air carrier. At the checkpoint, al Mihdhar caused the first walk through metal detector (WTMD) to alarm. However, he proceeded through the second WTMD without further alarm and so was allowed to continue with no further screening. Both Moqed and Nawaf al Hazmi caused the first WTMD to alarm, when the second WTMD also alarmed both men were then required to be further screened through the use of a hand-held metal detector (HHMD).[4] In addition, al Hazmi's hand luggage was also subjected to explosive trace detection (ETD) screening. Despite this, the five men were in possession of knives and box cutters when AA77 departed

[3] The customer service agent at check-in noted in addition to not having photo identification one brother could not understand English, and considered the behaviour of both to be suspicious (The 9/11 Commission, 2004).

[4] As part of the Commission's investigation, they showed CCTV footage of the use of the HHMD to experts, who deemed the quality to be 'marginal at best' noting that the screener failed to resolve the cause of the alarm in both cases (The 9/11 Commission, 2004: 3). Furthermore, the footage shows al Hazmi to have an item clipped to a trouser pocket which the screener failed to identify.

at 08:20 with the Captain, First Officer, four cabin crew and fifty-three other passengers onboard. The 9/11 Commission (2004) suspected the hijackers seized control of the aircraft between the last routine transmission being received by ATC at 08:51, and the aircraft deviating from the flight plan at 08:54. At 08:56 the aircraft's transponder was turned off. AA77 crashed into the Pentagon at 09:37.

At Newark Liberty International Airport, New Jersey, Ziad Jarrah, Saeed al Ghamdi, Ahmed al Nami and Ahmad al Haznawi checked in for the UAL93 to Los Angeles. Al Haznawi was another CAPPS selectee, however, due to the lack of closed-circuit television (CCTV) at the security checkpoint which was operated by Argenbright Security, The 9/11 Commission (2004) was unable to determine if any of the hijackers were subject to any other further security measures. UAL93 was scheduled to depart at 08:00 however was delayed due to heavy morning traffic and so took off at 08:42. The 9/11 Commission (2004) found that the long delay in taking off was a significant factor in UAL93 never reaching the hijackers' intended target. This delay meant that when passengers contacted people on the ground to notify them of the hijack, they were able to be informed of the fate of the other three flights. It was this knowledge that led the passengers and cabin crew to fight the hijackers in an attempt to gain control of the aircraft. Unfortunately this attempt failed and UAL93 crashed into a field in Shanksville, Pennsylvania, causing the death of everyone aboard. The 9/11 Commission was unable to determine Jarrah's intended target, however, it is suspected to have been either the Capitol Building or the White House.

9/11 caused an unprecedented shut-down of US airspace: all aircraft were subject to a ground stop meaning no aircraft was allowed to take off and all inbound international flights were diverted to land elsewhere. These restrictions remained in place until 13 September 2001 when 'the nation's airspace reopened for use by airports that met newly improvised security standards' (The 9/11 Commission, 2004: 327). Unfortunately, as anyone who is familiar with the history of aviation security would expect, the actions taken by the international aviation industry in response to 9/11 were designed to prevent a repeat attack being successful. Once

again there was an incredulous lack of innovation and forethought on the part of the international organisations (and to an extent national governments). Richard Falik states:

> The steps seemed designed to make it more difficult to repeat the operations that produced the World Trade Center/Pentagon tragedy, but it seems highly unlikely that a terrorist machine intelligent to pull of this gruesome operation would suddenly become so stupid as to attempt the same kind of thing again. If subsequent mega-terror attacks are repeated, they will undoubtedly seek different points of vulnerability and likely rely on different methods of attack (Falik, 2003: 217).

This is not only common sense, but something those involved in aviation security should have realised long before.

On 22 December 2001, Richard Reid, a British citizen who converted to Islam, attempted to destroy AA63 from Paris to Miami using an explosive device hidden in his shoe. Fortunately the device failed to ignite as a result of it having become damp from sweat. Passengers and crew noticed his attempts and subdued him allowing the plane to land safely in Boston (BBC, 2001: CNN, 2009). Whilst the shoe bomber's intentions were thwarted the incident was still momentous for aviation security, especially in the EU. The timing of it was such that the industry and policy-makers were still reeling from 9/11. Furthermore, this was not only a new method of attack which was far removed from the one that contemporary efforts were being focused on, but also one which EU aviation security measures had failed to detect.

On 4 July 2002, US Independence Day, a lone gunman opened fire at the El Al check-in desk at Los Angeles Airport, killing two and wounding seven before being shot dead by one of the airline's security guards (Lyman & Madigan, 2002; The Guardian, 2002). The gunman was an Egyptian national seeking to influence US policy regarding Pakistan. (CNN, 2003). This further highlighted another weakness of aviation security, the vulnerability of land-side: the areas of an airport to which the public has unrestricted access without having to undergo screening of either person or belongings, which are frequently congested providing a high concentration of soft targets.

On 28 November 2002 two missiles missed an Israeli registered charter jet, having being fired shortly after it took off from Mombasa Airport in Kenya (BBC, 2002: The New York Times, 2002). In 2003, some four hundred and fifty troops with armoured vehicles along with approximately one thousand and seven hundred police officers were deployed to London Heathrow over the course of several days. The increased visible security at the airport was accompanied by the stopping of all vehicles under flight paths within eight miles of the airport (BBC News, n.d.a). After the attempted attacks of the previous year, there was speculation that the undisclosed nature of the threat may have been the possibility of terrorists attempting to bring down aircraft through the use of surface-to-air missiles (SAMs). Extra police were also deployed to other UK airports. The possibility that terrorism directed against aviation may include the use of such missiles was not a new theory, it had been suggested even before 9/11. The fact was that despite the knowledge that such a method of attack was possible those responsible for British aviation security took no preventative measures, until after attempted attacks, and only in the light of evidence suggesting a very real and imminent threat was posed to a specific airport. This once again highlights the tendency of aviation security to be reactive than proactive. In August 2004, two aircraft which took off from Russia's Domodedovo Airport were sabotaged with explosives killing eighty-nine (BBC, 2004). This again highlighted the fact that terrorists will not constrain themselves to one 'current' method of attack but will exploit whatever weakness they can identify.

In 2006 British security services disrupted a plot to destroy multiple aircraft in-flight.[5] The plot consisted of suicide bombers using liquid explosives smuggled aboard in hand luggage disguised as soft drinks. It is shown in later chapters that of all the incidents since 9/11, the liquids plot has had the biggest effect on EU aviation security. The plan involved removing the contents of Lucozade and Oasis bottles and refilling them with a hydrogen-peroxide based explosive solution mixed with a sugary substance. This was done through a small hole in the bottom of the bottles using a syringe which could be easily resealed and would then be virtually

[5] As with the 1970 Dawson's field attacks and the 9/11 attacks, and also 9/11 and 'Operation Bojinka', the liquids plot was yet another twenty-first century incident with striking similarity to one which occurred before 9/11 - another aspect of 'Operation Bojinka'.

unnoticeable, to leave the seal on the bottle cap intact and make the explosives appear innocuous. This was to be detonated using hexamethlene triperoxide diamine (HMTD) contained within hollowed out batteries, using readily available sources of ignition such as metal wire or flashbulbs (TSA, 2008). This led to immediate restrictions being placed on liquids carried in hand luggage around the world, and in some countries bans on all hand luggage except for travel documents and essential items.

Airport services returned to normal a few days later, once the threat level had been downgraded. This meant that passengers were again allowed to travel with one piece of hand luggage albeit with certain restrictions. The most notable of which was a complete ban on all liquids, and the requirement that those wishing to carry laptop computers and other such electrical items had to demonstrate they were in fact what they purported to be (The Guardian, 2009). Eventually technological developments allowed the restrictions on liquids to be reduced. This is further evidence to support the view voiced by Philip Baum, editor of Aviation Security International that '[g]overnments tend to react to the last plot not the next one' (Ryan, 2009). As the previous section illustrated, the terrorist method of using explosives concealed in hand luggage was both well known and had previously been frequently enacted. The amazement that an old tactic had been resurrected in a new form utilising technological advances, once again highlights the failing of those involved in aviation security to recognise the modern terrorist's use of innovation. This is incredibly damning for aviation security as without first being recognised it cannot be countered. The immediate total ban on hand luggage and gradually reducing this down to the current restrictions, is reminiscent of the immediate prohibiting of items that could be used as weapons in the wake of 9/11. The difference between 9/11, and the methodology those behind the liquids plot aimed to use, proves Falik's theory as stated previously. Unfortunately given how this plot caught the industry by surprise, despite the ample precedent, it would appear that such warnings are as of yet, still going unheeded.

In 2007 there was another attack which further highlighted previously illustrated weaknesses in airport security. This was the attempted suicide car bombing of airport facilities. Two men drove at speed into the front doors of Glasgow Airport's main terminal. The vehicle which contained gas canisters, explosives and shrapnel had been set alight. The idea was to breach the doors gaining access to the terminal and detonate causing both maximum casualties and significant damage. As a result all airport operations were immediately stopped and the terminal evacuated. Also at other UK airports all vehicles were turned away on approach, some airports even suspended operations due to suspicious vehicles (BBC, 2007: The Guardian, 2007: The Telegraph, 2008). Fortunately the attempt was in the main unsuccessful. Once again there is the distinct impression that aviation security is reactive rather than proactive. In the wake of the threat to London Heathrow in 2003 the proximity of vehicular access to airport facilities was an issue the industry was well aware of. The concerns this raised, however, appear limited purely to the threat of possible attacks using SAMs. Despite the well known fact that car bombings had been a favoured tactic of terrorists worldwide for decades, it would appear that prior to it occurring, those responsible for ensuring aviation security had neglected to consider the potential threat these two issues posed in relation to one another.

On Christmas Day 2009, a plot to blow up Northwest Airlines Flight 253 from Amsterdam to Detroit by Umar Farouk Abdulmatallab, a Nigerian national, was foiled when the explosive device hidden within his underwear failed to detonate properly due to moisture damage. (The Guardian, 2011). Less than a year later, another plot was foiled when in October 2010 Saudi Arabian intelligence provided Western counter-parts with information concerning an al-Qaida in the Arabian Peninsula (AQAP) plot to destroy multiple aircraft. One device was found in the UK on a flight bound for the US from Yemen via Germany, the second was found in Dubai also originating from Yemen and destined for the US (Rayner & Gardham, 2010). The devices contained plastic explosives and mobile phones which were hidden in printer cartridges and were so sophisticated that the one recovered in the UK was initially cleared by explosives experts and only found because intelligence provided the exact details of the package containing it. Experts believe the device

would have cleared all security measures which were in place at the time. In fact experts had not determined that the package was an IED and it was only deactivated as a result of action inadvertently undertaken during the search. (The Guardian, 2010). As with the previous section, the instances considered in this section do not provide an exhaustive list of all post-9/11 occurrences of terrorism against aviation. Rather they have been selected as representative due to relevance.

1-4--Aviation security in practice.

In order to provide a more detailed explanation of aviation security as a concept, this section looks at the measures aviation security consists of in practice. It contemplates what an aviation security programme should consist of generally, as well as considering security across the different areas of aviation. There is a common theme prevalent among all who are concerned with aviation security. This theme is concerned with how practical aviation security measures should be applied in relation to one another. Aviation security, in order to prevent and protect against acts of unlawful interference, needs to employ numerous measures. These practical measures include a strong intelligence system based on communication and cooperation, a common argument is that the most important component in a strong aviation security programme is intelligence, a high level of emergency preparedness, plans to mitigate the negative after-effects of successful terrorist attacks, screening of both luggage and passengers, and many more. For an aviation security programme to be a strong one, it must be a multilayered system. It is in fact required to be a system of systems.

Aviation security is incredibly complicated, it is not simply 'the same' across the entire aviation industry. Rather, is a multi-faceted concept which is extremely different depending on the specific area of the industry or the particular method of application. There are three stages within the system: pre-screening, airport security and ‘in-flight’ security. The main security function Aircraft Operators (or

Airlines) are concerned with is pre-screening. Passenger pre-screening is simply put: the checking of a prospective passenger's identity to determine if they are a threat. Pre-screening includes intelligence cooperation with police and security agencies, both domestic and foreign, as well as border agencies. Pre-screening also covers another aspect of aviation security – document security. This is in short ensuring that all travel documentation is true and valid, to prevent terrorists using false passports or visas to gain access to or flee a country. 'In-flight' security too consists of a multitude of individual aspects. Many within the industry consider in-flight security to be of paramount importance as it is the last line of defence against unlawful interference. Many measures are concerned with preventing skyjackers from gaining access to the cockpit and therefore gaining control of the aircraft. The thesis will be concentrating on airport security however, as it is this area that the EU has become involved in since 9/11.

Airport security is considered to be the 'front line' of aviation security. As with all branches of aviation security, airport security consists of many aspects which together comprise a layered system. One aspect of current airport security procedures introduced in response to the Lockerbie disaster was one hundred percent checked baggage screening. All checked baggage must be screened by x-ray machines to identify concealed weapons. The majority of airports worldwide especially those in Western countries will also screen checked baggage using explosive detection systems (EDS). Since 9/11 this has been extended, all carry-on luggage is now also screened. Another aspect of airport security which is concerned with luggage is the policy of one hundred percent positive bag matching. This is the policy that dictates no unaccompanied bags may fly, baggage will only be loaded onto an aircraft if the passenger it is associated with has presented for boarding.

Airports are primarily businesses and most airports employ thousands of people across a wide range of positions, therefore a fundamental aspect of airport security is concerned with airport staff. In addition to the standard background checks regularly performed on all airport employees, staff in job roles that require access to secure areas are subject to screening and searches. Another staff related security

measure is the training of security staff. One of the foremost security concerns for an airport is the issue of access control. As well as extensive monitoring and surveillance, there are a number of practical measures implemented to control access to secure areas. These range from the simple yet trusted fencing to the extremely high-tech methods such as biometric identity locks. A more recent concern of airport security has occurred as a direct result of the success of airport security. This is the issue of man portable air defence system (MANPADS) missiles. As access control has improved, terrorists (with the aim of sabotage) have switched the focus away from gaining access to aircraft at airports. They have instead moved towards using portable missiles which can be fired at aircraft as they climb after take-off or descend on the approach to land. As such, airport security now has to encompass the monitoring and protection of all sites along flight paths where missile attacks could be successfully mounted. This can include hundreds of locations, within an area surrounding the airport with a radius of ten miles or so. Given the size and nature of such a task, a key concept of airport security is now intelligence liaison with the security services and close cooperation with police forces.

1-5--The specific subject matter of the thesis.

This thesis is concerned with the issue of the post-9/11 regulation and control of the formerly inter-governmental area of aviation security by supranational institutions who had no previous involvement. The specific research question this thesis answers is: **To what extent has EU involvement in aviation security occurred as a result of 9/11 and what effects has this had?** It must be noted that the thesis is only concerned with the effects of this involvement on matters relating to aviation security, effects of EU involvement in aviation security on other policy areas are outside the scope of this study. The thesis considers the following six specific questions which together provided a framework for both the research and the subsequent analysis. These are:

1. Where does the EU fit in the established aviation security system?
2. Why did the EU get involved in aviation security?

3. What did the EU set out to achieve by way of this involvement?
4. What has the EU achieved as a result of this involvement?
5. What areas does this involvement not cover?
6. How has this involvement affected aviation security outside the EU?

Whilst the focus of this particular project is extremely specialised, in terms of the academic field it is located within a much wider area of study. It is concerned with the aviation industry, EU politics, terrorism and counter-terrorism, and security studies. There are many reputable titles within these areas, all of which have something to offer and make their own contribution, but not all of which, however, are relevant to the exact subject of this thesis. Prominent examples being the many works of Javier Argomaniz and Christian Kaunert. As of yet there have been no works that have studied the various components of this project relative to one another. Nor have there been works that study these individual elements with a focus relative to this project, with a level of detail comparable to this thesis. Taking this into consideration, there is then a significant absence of competent literature. This absence is on the issue of aviation security post-9/11, more specifically the role of the EU in aviation security and the results of this. It is therefore necessary to study aviation security in the EU in the post-9/11 era, and the end product of the interaction of the many organisations involved.

One scholarly work which does consider post-9/11 aviation security measures from a European Studies perspective is Xiana Barros (2012). Barros begins by providing a thorough overview of the policy-making process and the three key players involved: Member States, the Commission and the European Parliament (EP). Then through in-depth examination of two specific cases: the ban on liquids in hand luggage and the use of body scanners, analyses the role of individual actors in order to determine the role of the EU in this policy area. This thesis differs from the work of Barros simply in terms of the scope and depth of the study. This thesis examines in considerably more depth both: the reasons for and the process of, the development of aviation security as a policy competence. It also considers the evolution of aviation security and the international regulation prior to 9/11 in order to provide

context to the analysis of EU efforts. Furthermore, this thesis examines in detail all policy initiatives produced during the first decade in terms of both legislation and implementation. Finally, the thesis considers the effects that EU involvement has had beyond simply legislating aviation security measures.

In order to protect against a threat, both the threat and that which is threatened need to be understood. Aviation security is therefore incredibly complex. It's evolution has been largely reactionary – driven by the response to terrorist attacks. Given the globally inter-linked nature of aviation this has been spearheaded by international organisations, which are constrained by having to set standards at the lowest level manageable by their entire wide-ranging membership. In addition, these organisations lack the power of enforcement and can thus only make recommendations – the implementation of which is solely dependent on the organs of individual nation states. History has shown however, insufficient control on the part of national governments seemingly favouring self-regulation of the industry which has demonstrated a tendency towards prioritising profits over costly security measures. 9/11 highlighted not only this inherent weakness but the devastating magnitude of the potential consequences. In the wake of the attacks, the Member States of the EU recognised the need for not only the highest possible standards of security but also the harmonised enforcement of said standards. The EU's ability to achieve this, in a technically complex area of which it previously had no experience, indicates its strength as an aviation security actor – both internally and externally. This is not only an important issue but one that is currently understudied.

2--Literature Review.

2-1--The gap in the literature.

This chapter is concerned with the absence of literature concerning the results of EU involvement in aviation security in the post-9/11 era. As the previous chapter showed aviation security is concerned with protecting aviation against acts of unlawful interference. Terrorism is not the only cause of such acts rather there are numerous others. It is however, the pre-eminent threat as it is both the biggest and most high-profile cause of acts of unlawful interference.

Given the sheer quantity of literature available on the subjects of security, terrorism and aviation, this chapter is by no means intended to provide an exhaustive review. this was not possible due to the space constraints on the thesis. Rather, it highlights the field of literature that this thesis contributes to and examines specific works. There are many celebrated authors within these fields which are not referenced in this thesis. Those works that have been were deemed reliable by either being subject to an academic peer-review process or due to the author's experience as either an academic or practitioner in the particular field. These were selected on the basis of their relevance in terms of content and argument to the particular focus of this thesis.

With examples drawn from the available literature, prevalent concepts within aviation security are highlighted. The complexities of ensuring aviation security across international borders, and the elemental requirements of effective aviation security are shown. The problems associated with the implementation of such standards by the EU as an actor are also highlighted. It was therefore the aim of this chapter to highlight the gap in the literature on aviation security in the post-9/11 era, especially in relation to the EU.

This thesis shows that terrorism is never ending and always changing, meaning that it is a very present threat, especially to civil aviation. To most effectively counter a threat, certainly one like terrorism, one must first understand it. Given that 9/11

constituted the first instance of an attack being committed using a particular terrorist methodology, the magnitude of it and how serious the potential consequences were, international security - both of civil aviation and also in the wider sense - was required to change. In order to enact this change, international cooperation was vital. The EU needed to unite and cooperate, ensuring, amongst other things, harmony of the national implementation of international standards. A strong civil aviation program should be a multi-layered system with intelligence as the most important component. The issue of achieving a balance between civil aviation security and civil liberties is one that should be considered as being of the utmost importance. The ability of the EU to achieve the above, what its role is in relation to this and the result of this is fundamentally understudied, as is shown in further detail below.

The attacks of 9/11 instantly brought terrorism and aviation security to the forefront of public consciousness, not just in the US but throughout the entire Western world. The Member States of the EU are not unfamiliar to either the concept of terrorism or terror attacks being committed within their borders. There are many Member States who have experienced nationalist/ethnic terrorism. These include Spain and Basque separatists, the United Kingdom (UK) and the Republic of Ireland and the troubles with republican groups such as the Irish Republican Army (IRA) and their offshoots, France and the issue of Algerian independence, and Germany and the Turkish and Kurdish struggles (Hoffman, 1998; Hewitt, 2008; Wilkinson, 2006: 2007). Recent examples of terrorist attacks include the March 2004 attacks on the Spanish transport system in Madrid, the murder of Dutch filmmaker Theo van Gogh in Amsterdam, the Netherlands in November 2004, and the July 2005 attacks on the British transport system in London (Hewitt, 2008; Wilkinson, 2007).

The UK had also experienced fatalities within its borders as a result of terrorism directed against aviation, in the instance of Lockerbie (Wallis, 1993: 2001: 2003; Wilkinson & Jenkins, 1999; Wilkinson, 1989). However, the attacks of 9/11 were so devastating and unprecedented that they appeared to change everything.

According to Rodney Wallis, 'few people could have contemplated a more horrendous scenario than that which befell the *Maid of the Seas.* Yet the events of September 11 were to supersede that traumatic happening' (Wallis, 2003: 14). Terrorism continues to be an ever present and significant threat in the present age, and almost the entire Western world has committed significant energies to defeating it. Aviation has been subjected to the threat of terrorism for decades. This has evolved from peaceful hijackings to armed attacks on aircraft, airports and other industry infrastructure, to in-flight bombings and, most recently suicide hijackings that have used aircrafts full of passengers as guided missiles, turning them into weapons of mass devastation (Arey, 1973; Phillips, 1973; St. John, 1991; Wallis, 1993: 2001: 2003; Wilkinson & Jenkins, 1999). If the aviation industry is to survive, the security of its property, staff and passengers must be paramount. Security, therefore, needs to be constantly evolving to deal with emerging threats. It is necessary to study previous instances of terrorism and the security responses they triggered, and evaluate the measure of success. The aim of this is to identify the fundamental requirements of aviation security in order to ensure the best possible prevention and preparation for the future.

Given the influence and standing of the EU in world affairs it is important to study its role in relation to such a prominent issue. Aviation within Member States is controlled by both the transport department of the relevant government and each country's civil aviation authority. All of the EU civil aviation authorities are ICAO Contracting States and must, therefore, conform to the standards set by ICAO. ICAO, however, has no power to implement these standards. Such power lies with the Commission and the individual national governments. The EU's ability to ensure coherent implementation of internationally set standards relating to aviation security across Member States is an area that is currently understudied.

2-2--The components of aviation security within the literature.

There is a prevalent common theme amongst all works that look at aviation security, irrespective of the depth of focus. This theme is concerned with how practical aviation security measures should be applied in relation to one another. These practical measures include a strong intelligence system based on communication and cooperation, a high level of emergency preparedness, plans to mitigate the negative after-effects of successful terrorist attacks, screening of both luggage and passengers and many more. The works of Easterbrook (2001), Kathleen Sweet (2004), Wallis (1993: 2003), St John (1991) and Wilkinson (2006: 2007) all agree with the argument made by this study that for any country's civil aviation security program to be a strong one, it must be a multilayered system.

A common argument is that the most important component in a strong civil aviation security program is intelligence. This is supported by the works of; Greg Easterbrook (2001), Peter St John (1991), Kathleen Sweet (2004), The 9/11 Commission (2004), Wallis (1993: 2003) and Paul Wilkinson (2006: 2007) who all voice this argument. Ronald Crelinstein (2009) also gives much consideration to the issue of intelligence as an aspect of successful counter-terrorism, and argues that it should be the central element of any security approach. The subject of EU intelligence cooperation is also covered by Graham Messervy-Whiting (2004). He considers how intelligence cooperation has developed since the turn of the century. Whilst he acknowledges intelligence cooperation in the fields of home affairs and justice prior to this date, he argues that there was almost none in the fields of security and defence. He looks at how this extremely successful and expedient improvement was achieved, as well as offering suggestions for the future. The rest of the literature suggests the EU needs to drastically improve its intelligence capabilities with respect to aviation security. This makes this work especially relevant to this project as what was done in the fields of security and defence, is what is needed for aviation security. Kristin Archick (2003) discusses the issue of intelligence. She argues that national police forces and intelligence services are reluctant to share information. This is something she argues needs to change, the EU needs to

harmonise national laws, and remove barriers between the police, intelligence and judicial branches of the various Member States.

To believe that any system will stop every attack that may be mounted is not only naïve but leads to complacency. A comprehensive security program must consider and plan for what would be required if an attack was able to succeed. Wilkinson (2007) suggests radical improvement to strategic planning and crisis management. Steve Hewitt (2008) concurs suggesting that Member States should consider their crisis management abilities as a foremost priority. Crelinstein (2009) also advocates this, arguing that defensive counter-terrorism measures such as target hardening, and critical infrastructure protection are necessary to mitigate the effects of future attacks (2009). This is a point also made by Anthony and Justin Cordesman (2002), and, Ronald Clarke and Graeme Newman (2006). John Meuller, however, provides context to this debate in his 2006 work. He argues that it is not possible for a nation to guard every target or protect all critical infrastructure for economic reasons. He also argues that doing so would create an atmosphere of constant paranoia, crisis and fear which would play into the hands of the terrorists. The need to consider future attacks is also addressed by Mark Rhinard, Arien Boin and Magnus Ekengren (2007), who believe that preventing known threats is one of the most important priorities. Governments, however, need to recognise that not all incidents can be prevented. Preparation for successful attacks then becomes crucial, in order to ensure an appropriate response. One title that does look at the current level of emergency preparedness in the EU, is Marc Coester, Klaus Bott and Hans-Jurgen Kerner's *Prevention of Terrorism: Core Challenges for Cities in Germany and Europe* (2007). It considers the problems associated with the type of terrorism that causes mass casualties in urban areas. It is argued in the report that the changing nature of the threat has meant that certain necessary experience is generally lacking. This is supported by Thomas A. Birkland's 'Learning and Policy Improvement After Disaster: The Case of Aviation Security' (2004).

There has been a considerable body of work published on the subject of striking a balance between ensuring effective security and respecting civil liberties. It is the

states' duty to protect its citizens, without damaging civil liberties or international justice (Dannreuther, 2007). Jayantha Dhanapala (2005) argues that the UN condemns terrorism due to the focus on protection of civilians, and believes that effective counter-terrorism should not affect human rights. The Council has strived to work with the UN Commissioner for Human Rights to ensure that new counter-terrorism policies are effective without contravening civil liberties (Geyer, 2007). The focus of this work, however, features around issues concerning intelligence gathering such as the use of torture, or the issue of racism and religious intolerance. Gregory believes that pressure to react since 9/11 has caused counter-terrorism measures to be agreed that 'overemphasise security' at the cost of human rights and civil liberties (2005: 121). Paul Gallis (2003) argues that this pressure has raised concerns on the subject of religious and ethnic tolerance, and that EU Member States are increasingly distancing themselves from the US. On the other hand is Bruce Bawer (2006), who argues that the price of overemphasising civil liberties can be security. He argues the EU Member States' policies of over political correctness and burying their head in the sand have led to erosions of Western values, such as freedom of speech. Furthermore that this has also contributed to the 'anti-Westernising' of Muslims in the EU by fanatics – measures designed not to be racist and risk provoking extremists or turning moderate Muslim's to extremism, have eroded the security of the EU. Gallis (2003) acknowledges this arguing that, since 9/11, some European countries have become wary of, or hostile to, immigration.

As of yet there is a lack of published works that consider in detail how various new specific aviation security policies affect civil liberties on a wider scale. This does not mean that no author has yet recognised this or raised the issue. Gregory (2005) argues that the pressure on the EU to cooperate with the US has raised questions regarding the legality of customs screening agreements, and data protection with respect to Passenger Name Records (PNR) data. PNR is an issue that is also looked at in detail by Kaunert & Sarah Leonard (2010), however, their focus is not that of a civil liberties perspective. Rather, it is concerned with the issue of international cooperation, and the strength of the Commission in the related policy areas of freedom, security and justice. Another useful work on this subject is Argomaniz's

'When the EU is the 'Norm-taker': The Passenger Name Records Agreement and the EU's Internalization of US Border Security Norms' (2009). The issue of PNR, with respect to civil liberties, is considered by Juliet Lodge (2004) although this is from a wider view point. In 'EU Homeland Security: citizens or Suspects?' she suggests that it is not simply about striking a balance between security and civil liberties. Rather, that the PNR debate 'begs serious questions about the impact of governance on individual rights and democratic legitimacy' (2004: 274).

This section of the literature supports the view that a strong aviation security system must be a multi-layered one consisting of: a strong intelligence system based on communication and cooperation, crisis management plans, defensive counter-terrorism measures such as target hardening, international cooperation and implementation of international standards through national policies. The argument that effective aviation security should not be achieved at the cost of contravening civil liberties, is also supported by the literature analysed in this section. Furthermore, the above examination of this section of the literature once again demonstrates how understudied the area of aviation security within the EU is.

2-3--Practical aviation security in the literature.

At the current time, the literature on practical aviation security in the form of airport security is extremely limited. This does not, however, mean there is nothing of value to this study. What literature on the subject of airport security that does exist can be divided into three categories. The focus of literature concerned with airport security is either concerned with: the design and management of an airport from a business perspective; a specific European nation; or a focus on the UK or the EU only as far as a brief comparison to the US. There are no works yet published that consider airport security solely within EU Member States, in any great detail. Those that look at practical aviation security in the most detail tend to be those that are concerned with airport operation and management. These also present the problem of either being US focused or not concerned with the EU to a great extent.

An example is Alexander Wells & Seth Young's *Airport Planning & Management* (2004), which focuses purely on American airports. The other notable texts are: Antonia Kazda and Robert Caves's *Airport Design & Operation* (2000); Anne Graham's *Managing Airports: an international perspective* (2001); Richard De Neufville's *Airport Systems Planning Design and Management* (2002); and Sweet's *Aviation and Airport Security: terrorism and safety concerns* (2004). These consider airport security from a worldwide perspective rather than a specific national focus. All of the above mentioned texts cover the consideration of previous threats to airport security and the legislative responses, evaluating the many methods of access control and physical security to adhere to current regulations. Also considered is the most practical design of airports and more specifically terminals to ensure best security practices. With the exception of Sweet, however, the focus on security is brief and it is considered from a business perspective.

Some of those that do look at practical European aviation security, only do so as far as focusing on a specific European nation. Wilkinson (2007) looks at improvements made since Lockerbie, from a British perspective. He suggests that the security focus for aviation should now be ensuring airport security remains at a high level, as well as paying more attention to in-flight security. Others look at European practical aviation security in comparison to the US. The 9/11 Commission (2004) discussed the problems with airport screening in the US prior to 9/11. It suggested that inadequate screening performed by ill-trained staff to standards lower than the international recommendation, possibly for profit-orientated reasons, may have caused 9/11. Jens Hainmuller and Jan Lemnitzer (2003) argue that airport security is better in Europe than the US because of higher paid and better trained security screeners, which leads to lower turnover rates. As a result of the 9/11 attacks, the US government took control of aviation security, and screening was the responsibility of the government rather than private companies as before. Hainmuller and Lemnitzer, however, argue that nationalisation of screening and other airport security functions is not necessarily the best option. This is based on their argument that despite many European airports using private companies, they are still achieving better security than the US. This section of the literature further

demonstrates just how understudied EU aviation security really is, reinforcing the main argument that aviation security within the EU is an area that requires significant attention.

2-4--Terrorism and aviation security in the literature.

As aviation has always been a prime target for terrorism, there have been titles that look at these subjects in relation to one another. However none of these focus purely on the EU. The titles that do look at both aviation security and terrorism generally fall into one of three categories: those with a wider focus on the issues relating to terrorism, a historical perspective, or, concerned with the 9/11 attacks themselves. From the various works considered in these categories, this study further shows the importance of arguments previously made such as; the importance of intelligence, international cooperation, and the implementation of standards as well as introducing the argument of profits versus security.

There are also those which stretch to one chapter on aviation security in works with a wider focus on terrorism and homeland security. Wilkinson (2006) considers the need for strong national aviation security systems working from international standards as well as a need to understand the threat. This is a theme he reiterates in his 2007 work. In this, he stresses the need for a greater awareness of the threats to civil aviation. He also makes an argument for the importance of regulation to be done independently of the airlines and airports so as to not allow the issue of profit to be a determining factor at the expense of security (2006). He suggests that the government should take the lead role in aviation security. Another very prominent theme in Wilkinson's works on aviation security is the vital role of international cooperation. Wilkinson (2006: 2007) reiterates the argument presented in the section of this literature review which is concerned with the many works on the subject of terrorism. This argument is that of the need to not only be aware of the threats but also to understand them. He also concurs with the argument of this study that successful civil aviation security requires strong national systems working

from international standards, and a high level of international cooperation. Wilkinson (2006) also concurs with the argument made in the two previous sections that profits should not be prioritised at the expense of security.

Almost all of the published works that consider the subjects of terrorism and aviation security relative to one another in any significant detail were published before 9/11, and do not, therefore, cover the most current terrorist threat to civil aviation security. This does not necessarily, however, detract from the quality of their content. An example is Wilkinson and Brian Jenkins (1999), which considers the history and evolution of various threats to civil aviation in order to suggest improvements and practices for the future. Wallis's *Combating Air Terrorism* (1993) highlights the requirement for international standards and procedures to be implemented by national governments and industries. St John's *Air Piracy, Airport Security & International Terrorism* (1991) considers intelligence, airport security, a refusal to put profits over security, in-flight security, national policies and international cooperation. Also, Wilkinson's *The Lessons of Lockerbie* (1989) argues that lessons should be learnt regarding complying with standards suggested by industry bodies, better use of intelligence and crisis management. Wilkinson and Jenkins (1999) highlight the importance of evaluating the lessons of the past to best prepare for the future. This further reinforces the same argument developed from the analysis of those works which are concerned with the various aspects of terrorism. The argument put forward by Wallis (2003) and St John (1991) regarding the importance of coherent implementation of standards across national policies further validates the argument derived from the literature. More specifically, this is the literature that is concerned with the problems that are associated with a unified counter-terrorism response within the EU. That argument is the EU's ability to ensure coherent implementation of international standards through national policies, and how this is affected by the organisational nature of the EU, is an area that requires further study. St John (1991) and Wilkinson (1989) both argue that the civil aviation industry should learn lessons from the past regarding the importance of intelligence in effective security. St John (1991) also argues that security not be sacrificed in favour of profits. The literature analysed therefore produces the

argument that lessons should be learnt from the past to ensure that future security efforts are as strong as possible. Such efforts should be a multi-layered system that incorporates strong intelligence and inter-agency communication, which is based on coherent implementation of international standards through national policies which prioritise security rather than profits.

There have been numerous titles published since September 2001, dealing with the weaknesses in aviation security exposed by 9/11 and what has been done since. Most of these, however, focus solely on the US system such as *The 9/11 Commission Report* (2004). It suggests that the insufficient cooperation between various agencies was another of the biggest of many shortcomings that allowed 9/11 to happen. A lack of communication between the intelligence community and the FAA prevented known terrorists from being placed on the FAA's no-fly list. Easterbrook (2001) suggests that the reason US aviation security was so lacking on 9/11 was due to the industry's tendency to put profits before security. He considers individual aspects of US aviation security and how they can be improved making suggestions based on better security practices from around the world.

Wallis's *How Safe Are Our Skies?: Assessing the Airlines' Response to Terrorism* (2003) looks at incidents of aviation terrorism over the years and the lessons to be drawn from them. Both the good and bad points of aviation security in various countries are considered in comparison to other countries. Overall, Wallis's suggestion is that European aviation security has generally been consistent with international standards as a minimum, and in some specific cases been a world leader. These include the UK's leading role in ensuring full luggage screening and Amsterdam's Schipol Airport.

On the subject of aviation, it is argued that, despite the higher number of casualties per attack, the significant drop in attacks led to a complacency that may have directly or indirectly led to the terrorist's success on 9/11 (Kurth Cronin, 2003). The 9/11 Commission (2004) argues that the lesson that should be learnt from 9/11 is the importance of strong intelligence and cooperation between various agencies.

Easterbrook (2001) argues that another lesson to learn from 9/11 is the danger of putting profits before security, an argument clearly visible in the previous section. Both Wallis (2003) and Audrey Kurth Cronin (2003) argue against complacency, which further validates the requirement behind this thesis that the threat to the security of civil aviation from terrorism is an issue which requires both attention and further study.

2-5--The effect of 9/11 on terrorism literature.

Not only was 9/11 the single most deadly instance of terrorism directed against aviation, but also the most publicised terror attack of the decade. Given that the ramifications included the US led 'War on Terror', it is unsurprising that it has had such a profound effect on the literature. As it has already been stated there has been a veritable onslaught of works published in recent years that link 9/11 and terrorism and also counter-terrorism. Again, the sheer volume should not be confused with quality. Also, there are many titles that are not relevant to the needs of this project. This is either due to a lack of original quality content, or a focus that is of no concern to this project. Most of the acceptable texts in this category are concerned with the failings that allowed 9/11 to happen and how best to correct these. The most prominent text on the subject of terrorism and 9/11 is final report of the 9/11 Commission published as *The 9/11 Commission Report* (2004). The report is mainly concerned with failings in the US system that allowed 9/11 to happen, and therefore the necessary improvements that are required. The fact that it is based on more than a year and a half of investigation by a team of nearly eighty, with the power of the government of the only superpower behind it (but not controlling it), lends credence to its reliability (Kean & Hamilton, 2007). The 9/11 Commission considered so many areas in such detail, that it is unlikely that its work on this subject will ever be paralleled. The 9/11 Commission Report is supported by both Thomas Kean & Lee Hamilton's *Without Precedent: The Inside Story of the 9/11 Commission* (2006), and Steven Strasser's edited work *The 9/11 Investigations* (2004). These contain much information that was not included in *The 9/11*

Commission Report (2004) due to space considerations. *The 9/11 Commission Report* (2004) also details lessons the rest of the world should learn from the attacks, arguing the importance of this. It is also extremely informative with respect to the inner workings of US civil aviation, which is a federal system, and can therefore provide a comparison for a common EU system. Prior to 9/11, EU aviation security was subject to only national legislation. Upon EU involvement, aviation security is now also subject to the Community legal framework, however, the EU still has to respect national sovereignty. On the other hand, the US has state law in place whilst also having an overarching federal law system. As such, any comparison between the structure of the EU and US civil aviation systems brings to light the issue of the supranational versus inter-governmental debate concerning the EU.

There are numerous works that have been published which are concerned with how counter-terrorism has changed to deal with the change in terrorism demonstrated on 9/11. According to the literature, the biggest effect 9/11 had on the fields of counter-terrorism and security is that it challenged pre-conceived perceptions regarding the threat terrorism presented for both, individual nations, and also, the international community as a whole. Wilkinson's 'Implications of the Attacks of 9/11 for the Future of Terrorism' (2003) suggests that 9/11 changed the view that terrorism did not pose a strategic threat to the security of major powers or the international community. Terrorism is now an undeniable reality, and that given its varying nature, there is no single solution. Ronald Dannreuther's 'International terrorism and the Impact of 9/11' (2007) also concurs. He argues that international security has been radically transformed by 9/11, and that the threat from transnational terrorism is real. There is also Kurth Cronin's 'Transnational Terrorism and Security' (2003) which argues that globalisation is likely to be the main cause of international terrorism in the future. None of these however, consider aviation security in any detail. As well as changing opinions about the threat terrorism presents, the attacks of 9/11 have also changed opinions on what constitutes counter-terrorism. Crelinstein considers the various different methods of counter-terrorism by way of a theoretical approach, with no specific national focus. He looks at the dichotomy between pre-9/11 and post-9/11 approaches to counter-

terrorism. He argues that the counter-terrorism approach since 9/11 'September 12 thinking' considers terrorism to be a type of warfare (2009: 9). It is, therefore, more concerned with the military approach than the criminal justice model of counter-terrorism. He argues that the measures utilised in the new counter-terrorism model were previously considered unpalatable.

It is further suggested that post-9/11 counter-terrorism is, itself, morally questionable. Richard Clarke (2004) also airs this view. He too, looks at how the events of 9/11 changed counter-terrorism thinking, although he considers the issue from a purely American perspective. He believes that the US response to the attacks of 9/11, was far more heavy handed than required. It is apparent that he considers (albeit in hindsight) the military invasion aspect of the War on Terror, to be a rash and disproportional response, and not in keeping with previous counter-terrorism approaches. Sinclair (2003), believes that one of the main problems with the War on Terror is that it lacked strategy. Clarke (2004) further argues that the politicisation of the issue of terrorism (and especially that committed by Islamic groups such as al-Qaida) has undermined the US's counter-terrorism abilities. Wilkinson (2003) concurs with the argument previously stated that terrorism is a constantly evolving reality that will not go away which poses a very serious and significant threat. Dannreuther (2007) concurs, adding that international security has been required to change in response to 9/11, a view that holds great importance to civil aviation. Kurth Cronin (2003) argues that globalisation will only increase terrorism. Crelinstein (2009) argues that 9/11 fundamentally changed the view of what terrorism is and therefore what counter-terrorism should be. Both Clarke (2004) and Andrew Sinclair (2003) argue that counter-terrorism since 9/11 has been poorly thought through and that counter-terrorism from here on needs more consideration. Clarke (2004) also argues the importance of not politicising the issue of terrorism.

The literature analysed in this section, therefore, supports this author's view that the events of 9/11 were so drastically different from what had come before that as Wallis (2003) argues they appeared to change everything. The simple deduction

that counter-terrorism efforts (especially those concerned with the security of civil aviation) also require significant change and development in order to effectively counter the new threat is also evident from the literature contained within this section. It is necessary, however, that civil aviation security does not concentrate solely on the methods used on 9/11, but also considers how to safeguard against the next threat. As it is likely that when, not if, it comes, it will again have evolved.

2-6--The field of terrorism within the current literature.

There is a significant body of literature on the subject of terrorism (and counter-terrorism), a large percentage of which is in the form of journal articles. This chapter considers a portion of these. Whilst many were published in the latter half of the twentieth century, a considerable percentage have appeared as a response to the stimulus that was the terrorist attacks of 9/11. In the case of the book titles, they range as much in specific content as they do in the quality of said content. Whilst a similar range in content exists among the literature available in the form of journal articles, there is considerably less of an issue in relation to the quality of this content, as all the journal articles considered in this chapter are peer-reviewed works.

This section of the literature is concerned with those works which look at both the history of terrorism and how it has evolved. They look at past types of terrorism as well as the current threat to assess how terrorism has changed with time, and argue that it is not a phenomenon that is likely to simply disappear. One such text is Bruce Hoffman's *Inside Terrorism* (1998). This looks at what terrorism is and the problems associated with defining it. He also studies many other aspects of terrorism; ethno-nationalist and separatist struggles, international terrorism, religiously fuelled terrorism, the influence of the media and public opinion with regards to terrorism, modern tactics including martyrdom, and the future of terrorism. One of the principal arguments of this work is that terrorism is never ending and constantly evolving. Another text that looks at the history and evolution of terrorism is

Sinclair's *An Anatomy of Terror: A History of Terrorism* (2003). Unlike some historiographies which concern themselves with 'modern terrorism', it looks at terrorism throughout the centuries. It considers terrorism dating all the way back to the Roman destruction of Carthage. Other episodes it considers are the Crusades, the French revolution, the Ku Klux Klan, the Irish Rebellion, State terror, Palestine, and the 9/11 attacks. The main message of this work, which is continually repeated, is that terrorism will always continue to occur, it will inevitably change but it is unlikely to end. Hoffman's argument is that terrorism is never ending and is also constantly evolving, and Sinclair's argument is that terrorism will inevitably change but is likely to end. This reinforces the fundamental nature of this thesis that terrorism is a very existent threat in the present age and one that requires significant attention.

Another area of the field that is covered by the literature concerned with terrorism that this study has analysed is the consideration of past events. These texts are those that look at past incidences of terrorism and the lessons that can be drawn from these. These argue that it is by learning from the past that we are best prepared from the future. One work that considers terrorism over the years and the lessons to be learnt is Clarke's *Against All Enemies: Inside America's War on Terror* (2004). Clarke draws on personal experience of working in terrorism and counter-terrorism roles within the US government. He considers how the various US Presidential administrations have dealt with the spectre of terrorism over the years. He shows how the reaction of the US government to anti-American terrorist groups (including al-Qaida) has changed through the 1990s and into the twenty-first century. Clarke's principal argument is that effective counter-terrorism requires both foresight and hindsight, meaning that lessons should be learnt from the past to prevent previous mistakes occurring in future efforts. This is in keeping with the view of this study, which is that by learning from the past we are best prepared for the future. It is important, however, that counter-terrorism efforts do not become too heavily concerned with retrospect.

The available literature shows that there is a consensus amongst the literature that terrorism is constantly evolving and will never go away. In light of this, it is imperative that attempts to prevent a repeat of yesterday's attack do not come at the cost of efforts to pre-empt and foil the attack of tomorrow.

Another plentiful sub-section of the literature on terrorism is the focus on a specific 'nature' of terrorist violence. These are those titles which are concerned with a specific type of terrorism and/or its cause(s). These generally argue that, in order to be able to successfully counter a particular type of terrorism, it is necessary to understand it. One of these is Tore Bjorgo's *Root causes of terrorism: myths, reality and ways forward* (2005). This is concerned with identifying specific causes of terrorism. It looks at the immediate causes and circumstances that motivate and facilitate specific campaigns and acts of terrorism. Bjorgo's argument is addressing the causes of a problem is often more effective than trying to fight the symptoms and effects. With the 9/11 attacks being committed by the terrorist group al-Qaida, a great number of those published since 2001 consider religious terrorism. Many more specifically look at al-Qaida, other 'Islamic' terrorist groups, or Islam itself. Unfortunately, some are barely more than more than a crass attempt to capitalise on the situation, and are full of prejudice and bigotry. There are, however, some notable texts in this category that are relevant due to the better understanding of the current threat, the reader gains from them. One such text is Jason Burke's *al-Qaeda* (2007) and is based on a decade of investigation into, and experience of, Islamic extremism. He believes that to be able to determine the nature of the threat faced, one must consider its history and formation. Burke shows how mistakes on the part of the West have helped al-Qaida to flourish, rather than worked to eradicate it. The principal argument of this work is that as much as one condemns terrorist violence, especially religious extremism, one should strive to understand it.

In a similar vein is Jerrold Post's *The Mind of the Terrorist: the Psychology of Terrorism From the IRA to Al Qaida* (2007), in which he looks at the causes of three different types of terrorism. The first type is those with either nationalist or separatist motivations such as; secular Palestinian groups, the IRA, Basque

Homeland & Freedom (ETA), the Kurdistan Workers Party and the Tamil Tigers. The second is those of a social revolutionary motivation such as; the Red Brigades, the Red Army, the Revolutionary Armed Forces of Columbia (FARC) and the Shining Path. The final motivation is religion incorporating groups such as; Hezbollah, Hamas and al-Qaida. Also considered are the current issues of suicide terrorism and weapons of mass destruction (WMD). He argues that in order to address the causes of terrorism you must understand the view point of the terrorist.

Jessica Stern's *Terror in the Name of God: Why Religious Militants Kill* (2003) is based on years of first hand interviews with extremists subscribing to three religions: Christianity, Islam and Judaism. Unlike other authors who tackle religious terrorism, Stern's work is authoritative. Based on the extent and nature of her research, she is better able than most to understand why this particular type of terrorism occurs. She then turns this into suggestions on how best to effectively counter it. The underlying argument of her book is that the worst aspect of religious terrorism is that it aims to destroy moral distinctions themselves. Stern's main argument is concerned with what is considered to be the worst aspect of religious terrorism. She also makes the argument that for one to be able to make suggestions as to how best to effectively counter something, one must first understand it. Burke (2007) agrees, also advocating the need to understand the threat. Post (2007) goes further arguing to understand the threat one must first understand the view point of the terrorist.

Considering how drastically the type of threat faced by civil aviation has altered since the turn of the century, and how the potential for devastation has increased correspondingly, only highlights the relevance of this argument. Failure to properly understand the threat it faces would be fatal for the security of civil aviation.

Another aspect of the literature that this review is concerned with are the subjects of martyrdom and suicide terrorism. As this was the methodology of the 9/11 terrorists, a number of books have been published since 9/11 on the subject. Most subscribe to the argument that to counter something it is necessary to first

understand it, and are concerned with exploring the ideology in order to assess how best to stop it. One of the best titles on this subject is Mohammed Hafez's work *Suicide Bombers In Iraq: the Strategy and Ideology of Martyrdom* (2007). He looks in detail at why people turn to such an ideology, as well as what they hope to gain from it, in order to suggest how best to counter it. Hafez argues that it is the glorification of martyrdom and the perceived power that goes with it that seduces people. Another such text is Terry McDermott's *Perfect Soldiers: The 9/11 Hijackers: who they were, why they did it* (2005). In this, McDermott traces the history and backgrounds of all nineteen of the terrorists that hijacked the four planes on 9/11. By analysing each of the nineteen in comparison to one another, he draws conclusions as to why these men turned to suicide terrorism. As with Hafez, this is done in the hope that finding the causes will help to find a solution. Again this illustrates the need to identify the root causes in order to understand the threat. Hafez argues that it is the perceived glory and power associated with such tactics that entice people to follow such an extreme ideology, with which McDermott concurs. McDermott also highlights the importance of indentifying root causes which corresponds to the argument detailed in the previous section regarding understanding the threat.

There is much relevance to this argument when related to civil aviation security. Better understanding of the mentality of martyrs and suicide terrorists may well lead to it being easier to identify tactics they are likely to employ along with patterns of behaviour, and thus make it easier to guard against this happening.

Many of the most immediate publications after 9/11 were edited works containing collections of essays. Whilst some were merely reproductions of already published articles with simply a new introduction and conclusion, others were infinitely better. These contained essays on many of the issues that the new threat related to, collated together to form a reader which provides an overview of the entire subject. The downside of such titles is that the majority of the content will not be relevant to certain specific areas of study such as aviation security in the EU. Also, as each particular subject is generally only covered at chapter or article length, they

tend to be limited in depth. This, however, does not necessarily detract from their usefulness.

An example is the edited work *How Did This Happen: terrorism and the new war* (Hoge & Rose, 2001). It not only contains Easterbrook's 'The All Too Friendly Skies: security as an afterthought', but also contains essays covering such themes as; terrorist finances, intelligence, bio-terrorism, economic repercussions of terrorism, the history of Islam and its relationship with terrorism, how terrorism has changed, the new needs of security and military involvement. One of the reasons this is one of the more useful texts in its category is the wealth of knowledge of the contributors. All are leaders in their fields and have either excellent academic reputations or significant practical experience, or in some instances both. A few examples are a former National Security Adviser to a previous US Presidential administration, a retired senior Army officer who served as Supreme Allied Commander Europe (SACEUR), a former intelligence service station chief and numerous top scholars. The collective argument of this work is that terrorism is both multi-faceted and evolving, therefore counter-terrorism needs to be so as well. This concurs with the argument derived from the literature in the section concerned the history of terrorism.

Considering a sample of the available literature concerned with the many and various aspects of terrorism has further highlighted the view that terrorism is a very present threat in the current age and one that poses a significant risk to the security of civil aviation. It can be seen that terrorism is constantly evolving and unlikely to end unless it is stopped, and that in order to most effectively do this it is necessary to first understand the phenomena and the threat it poses, including the ideological factors.

2-7--International cooperation within the existing terrorism literature.

Terrorism, and the current responses to the threat posed, clearly demonstrates that no country is completely immune to threats posed against other nations. Different countries must work together if they are to deal with the common issues that affect them all. The nation the EU most commonly and extensively cooperates with (and especially when it comes to terrorism and counter-terrorism) is the US. Within the literature published on the subject of terrorism and counter-terrorism a significant majority is concerned with transatlantic relations, i.e. US and European cooperation.

Many of the titles that look at transatlantic counter-terrorism cooperation focus more on the cooperation of the US with individual European countries rather than with the EU itself. This is likely due to the issues surrounding the Member States of the EU acting as a coherent body. Kaunert and Leonard in their book chapter 'the external dimension of EU counter-terrorism cooperation' (2010) however suggest such a view may not be applicable to all areas of counter-terrorism. Whilst acknowledging the US has approached individual Member States, they argue that the US has on occasion seen the benefit of working with Europe at the EU level through partnership with the Commission. Andrew Cotley (2007) acknowledges the post-9/11 increased unity between the US and the EU as a whole, and further states that there has been considerable counter-terrorism progress since the turn of the century. He argues that 9/11 brought transatlantic solidarity and cooperation in many counter-terrorism areas, including customs, the area of freedom, security and justice, and intelligence sharing.

Monica Den Boer and Jorg Monar (2002) argue that ensuring effective counter-terrorism has required the EU to improve cooperation with the US in the areas of home affairs and justice. One prominent author who subscribes to this view is Wyn Rees. In his work *Transatlantic — Counter Terrorism Cooperation* (2006) he considers the issue of international cooperation (between the US and the EU) in great detail. He argues that this EU-US cooperation has, however, been hampered by what he considers to be differing responses and threat perceptions. The US

appears to want to achieve the impossible — obtain absolute security and become invulnerable. Member States of the EU (and also the EU as a whole) however are more pragmatic, and are satisfied with merely managing the risk to the best of their abilities. Archick (2003) suggests that some of the main issues that are hampering, but not preventing, successful cooperation between the EU and the US are the death penalty and the differences in the data protection laws.

Kaunert and Leonard (2010) also consider this issue. They, however, present a different view: that of shared concerns between the US and the EU, which has caused a similar threat perception. It is merely the response which differs, with the US preferring a military response. Kaunert and Leonard also denounce the view that these differences render cooperation impossible. On a similar vein is *Redefining TransAtlantic Security Relations: the challenge of change* (Mahncke et al., 2004). This is another text that looks at the transatlantic security relationship in great detail, and what it means to the EU with respect to terrorism. Cotley (2007) and Den Boer and Monar (2002) argue that ensuring effective counter-terrorism since 9/11 has brought transatlantic solidarity, and has required the EU to improve cooperation with the US. Rees (2006), Kaunert and Leonard (2010), and Archick (2003) all argue that there are differences in the response to terrorism between the EU and the US.

It is evident from the literature analysed in this section, however, that these differences have not prevented cooperation between the two. This argument is of great relevance to this project as civil aviation security requires international cooperation. The EU's ability to cooperate with the US bodes well for the future of civil aviation security in the EU.

2-8--The issue of internal EU cooperation within terrorism literature.

International cooperation has been shown to be vital in aviation security, however, in EU aviation security cooperation among the various Member States of the EU is just as important, if not more so. This portion of the literature review focuses on those works that look at internal cooperation within the EU in relation to the issue of terrorism (and therefore counter-terrorism). It looks at the importance of such cooperation in this field and the problems associated with it, analysing the relevance of this to a study of EU aviation security. It also uses the subject of the European Security and Defence Policy (ESDP) to illustrate how lacking this area of the literature is.

Dhanapala's 'The United Nation's Response to 9/11' (2005) suggests that the United Nations (UN) is the only true global body, and that it has primary responsibility for the maintenance of international peace and security. Dhanapala argues that given the importance of countering terrorism the one hundred and ninety-one countries need to stop differing over definitions and pass a comprehensive anti-terrorism convention. This view is supported by Cotley (2007) who considers terrorism as one of the most important of a number of aspects concerning security in the EU, and one that requires a unified response from the EU. Joanne Wright (2006) argues that an important counter-terrorism approach is one that the EU strongly endorses. This is the integration of development and foreign aid into counter-terrorism strategies when dealing with failed states or third world countries. The EU's counter-terrorism approach is also concerned with the issue of non-proliferation and arms control in relation to less developed countries. It is further suggested that the principal tenet of the EU's contribution to the international coalition against terrorism is that of engaging in political dialogue with third world countries. The EU also aims to provide them with the technology and expertise they need to be capable of effectively dealing with the threat of international terrorism.

One very important theme of The 9/11 Commission's work is, whilst appropriate legislation may be passed, it will not be self-executing, it is the successful implementation that is important (2004). This statement is especially valid when

applied to civil aviation. As Wallis (2003), Wilkinson (2006) and The 9/11 Commission (2004) have stated it is the enacting of these standards through the implementation of national policies and legislation that is key to strong aviation security. This is one of the reasons that the EU needs to be able to unite in policy areas. Cotley (2007) argues that terrorism is one of the most important issues facing the EU, and this concurs with one of the principal arguments of this study that the threat of terrorism faced by the EU is an area requiring significant attention. This is especially important in areas so understudied as the security of civil aviation currently is.

David Spence (2007) argues that Europe's apparent initial inability to rise to the challenge of responding coherently to 9/11 is characteristic of its history. He further argues that moving into new policy areas has always caused disputes between Member States and European institutions. Some of the issues these disputes centred around were national sovereignty, EU values and European integration. Cotley (2007) supports this view, arguing that individual Member States have enacted different counter-terrorism measures and there has been little united action from the EU as a whole. Kaunert further elaborates on this valid argument in "Without the power of purse or sword": the European Arrest Warrant and the role of the Commission' (2007), arguing that the Commission has rarely taken the lead nor consistently played a very active role in the area of freedom, security and justice. This view is also true when applied to the subject of aviation security. One title that looks how counter-terrorism has improved since 9/11 across the EU is Gallis' 'European Counter — Terrorism Efforts Since 9/11: Political Will and Diverse Responses' (2003). This is one of the works that has the most comprehensive view of the European Union. It considers what improvements have been made in counter-terrorism by individual European nations. It looks at the following countries: Albania, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Estonia, the Former Yugoslav Republic of Macedonia (FYROM), France, Germany, Greece, the Republic of Ireland, Italy, Latvia, Lithuania, Luxembourg, Macedonia, the Netherlands, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and the UK. He also considers the Council and the EU.

Gallis (2003) also argues that the domestic political factors of Member States influence the debate over terrorism. Gregory (2005) concurs arguing that due to the EU's organisational nature, it has struggled to reach common positions and identifiable outcomes. Kaunert (2007) quotes Andrew Moravcsik as arguing that supranational institutions are 'late, redundant, futile and even counterproductive.' This is refuted by Doran Zimmermann's 'The European Union & Post 9/11 Counterterrorism: A Reappraisal' (2006), which suggests the EU would fare better in the realm of counter-terrorism if it were a supranational institution. It postulates that a coordinated response to terrorism is difficult due to the EU being an inter-governmental not supranational institution that lacks an executive mandate, a single intelligence agency or police force, and therefore is incapable of implementing coherent measures in all Member States. This is not a problem solely concerning the EU but is applicable to the international organisations that control civil aviation security. Spence (2007) argues that its inability to act as a coherent body in response to 9/11 is typical of Europe. Cotley (2007) argues that different counter-terrorism measures have been enacted by the various Member States and that there has been little united action. Kaunert (2007) argues that the Commission has rarely played an active role in this area of policy. Gregory (2005) argues this is due to the organisational nature of the EU. Zimmermann (2006) argues that the very nature of the EU renders it incapable of implementing coherent measures.

The arguments put forward by these scholars further justify this study's argument that the EU's ability to ensure coherent implementation of international standards through national policies is an area that requires further study. The further argument of this study that it is necessary to consider the organisational nature of the EU and the effect this has had on its ability to achieve coherence is also evident from the literature analysed in this section.

A considerable percentage of the terrorism and counter-terrorism literature that looks specifically at the EU is concerned with the common ESDP. In terms of relevance, however, this focus on the ESDP provides a mixed bag for this particular

project. Whilst policy makers at both the national and international level consider aviation security as one of the many issues involved in national security, such policies like the ESDP do not consider the issue. As this project is more specifically concerned with the role of the EU in aviation security, the ESDP is worthy of reflection. One of the most prominent problems in regulating security within international civil aviation is the implementation of common standards across national borders. In terms of the EU, the task of achieving coherence on issues to do with security and terrorism is one fraught with problems. The ESDP therefore provides an example of the issues involved with EU implementation of a common policy across Member States. One of the best texts concerning the ESDP is Esther Brimmer's edited work *The EU's Search for a Strategic Role: ESDP and its Implications for Transatlantic Relations* (2002). It not only gives an overview of what the ESDP is and what it entails, but also covers many of the issues associated with the ESDP. In a chapter concerning the ESDP in the edited work *The Politics of European Security*, Jess Pilegaard (2004) argues that the current approach to the ESDP is insufficient and is unlikely to be long lasting. It is further argued that actually implementing the strategies contained within the ESDP is likely to cause discord amongst the various Member States of the EU. It appears to be a common perception that the biggest obstacle to making progress on the ESDP is the lack of unity between Member States. It is argued that there has not been a strategic framework for the ESDP that has been equally accepted by all Member States. This is seen to be due to differing prioritising of threat perceptions and responsibilities across various countries (Otte, 2002; Pilegaard, 2004).

Whilst relations and cooperation between the US and the EU, and the ESDP are not strictly relevant to this project, certain aspects of this area of the literature are related. A project looking at the role of the EU in civil aviation security is required to consider the EU's ability to operate in an international forum. It therefore has to look at the EU's ability to cooperate and interact internally. The issues uncovered in this section of the literature are of the utmost importance to the study of EU aviation security for the following reason. Agreements at the EU level require

implementation to happen. In order to be truly effective, any EU policy must be in conjunction with international cooperation.

2-9--Conclusion.

Despite this particular project being rather specialised it is still located within a much wider area of study. It is concerned with the aviation industry, politics, terrorism and counter-terrorism, and security studies. As of yet, there have been no works that have studied the various components of this project in relation to one another. Nor have there been works that study these individual elements with a focus relative to this project, in any great detail.

There are many reputable titles within the field of terrorism and counter-terrorism. These are not only the ones considered in this literature review but also countless others not included. All of which have something to offer and make their own contribution. Despite a difference in focus or subject, the many works cited are of use to this project. There are those that outline the history and development of the various areas of study. There are also those which serve to explain or illustrate key concepts of the individual elements involved. Some deal with issues or situations that are similar to the content of this project. Others, despite different focuses contain arguments that, not only transfer, but are extremely valid to modern European aviation security.

Through the examination of the literature analysed above, this study has reached the following conclusions. Terrorism as a phenomenon, which has been shown to be both never ending and always changing, continually evolving, is a very existent, undeniable threat in the present age - especially to the security of international civil aviation. To most effectively counter a threat, certainly one like terrorism, one must first understand it, not just the general threat but all aspects of it, the history of it, the root causes and the psychological mindset of those who get involved in it. Given how dramatically different the attacks of 9/11 were to all incidences of terrorist attacks that had come before and how serious the consequences of them were,

counter-terrorism must evolve in order to deal with this new threat. Therefore, international security, both of civil aviation and also in the wider sense, is required to change. Whilst it is necessary to learn lessons from the past, it is important to concentrate on the future, preventing a repeat of the most recent attack should not come at the expense of preventing the attack of tomorrow. Successful international cooperation is vital. The EU also needs to unite and cooperate internally, ensuring amongst other things harmony of the national implementation of international standards. The security of civil aviation should not be sacrificed on the altar of profit, but should be seen as the priority. A strong civil aviation security program should be a multi-layered system, of which, intelligence is the most important component, and should be based on communication and cooperation. The issue of achieving a balance between civil aviation security and civil liberties is one that should be considered as one of the utmost importance in counter-terrorism especially civil aviation security.

With the exception of the various works mentioned above, all of which are wide ranging in scope, there is a significant absence of competent literature. This absence is on the issue of aviation security post-9/11 and, more specifically, the relationship between aviation security and the EU. One reason that may explain why this is the case, is that in the past decade or so acts of aviation terrorism have become more sporadic, when considering possible future terrorist attacks the focus has moved away from aviation. After the attacks on Madrid and London other forms of transport are now considered to be soft targets that terrorists are likely to try and exploit. This author, however, agrees with Wallis who believed '[t]he battle now has to be against complacency. Many years have passed since commercial aviation services. . . have been hit by an act of unlawful interference, but terrorism directed against civil aviation will not go away' (2003: 51).

With this in mind, it is even more important to address the issue of the apparent lack of research in this particular area. It is necessary to study aviation security in the EU in the post-9/11 era, and the interaction of the many organisations involved. Not only does this enable one to determine the role of the EU in aviation security,

but also at least partially fill an extremely conspicuous absence in the available literature.

3--Theoretical Framework.

3-1--Introduction.

The previous chapter highlighted the lack of consideration of aviation security as an issue, particularly in relation to the EU. Having considered what literature is currently available on aviation security and also that which is relevant within the wider field of counter-terrorism, this thesis now turns its attention to the theoretical realm. This chapter begins by detailing the subject of the thesis, focusing specifically on what it aimed to analyse. Second, this chapter seeks to provide a definition of 'aviation security' and to explain in detail the concept. This includes showing how aviation security was regulated (as an international industry) prior to 9/11, in order to provide the base point for this research project and a reference point for the later analysis concerning where the EU 'fits' in the international aviation security system. The chapter then considers three important political concepts that are significant for this research project, and shows how they can be applied to the question in hand. This is in order to provide a theoretical framework on which this research project could build and through doing so shape the research regarding aviation security in the EU.

The issue that the research project is in the main concerned with is the post-9/11 regulation and control of aviation security by institutions – both supranational and inter-governmental – who had not previously been involved in this area. In other words, the development of EU involvement in aviation security as a result of the terrorist attacks of 9/11 and the effects this has had. Special focus is given to the EU, primarily the Commission, the EP and the Council. The research question this thesis is concerned with answering is: **To what extent has EU involvement in aviation security occurred as a result of 9/11 and what effects has this had?**

More specifically, the research project is concerned with the history of the development of aviation security as a policy area. The particular focus is: the reasons for, in the wake of 9/11 the EU becoming involved in what had previously

been a national competence, the institutions responsible for this, and the effects of this involvement. In order to do this it looks at three specific sub-areas. These are: 1) where the EU considers aviation security to be located as a policy area and how this occurred, 2) the roles of the various EU institutions involved in aviation security and their relationship with the relevant industry bodies, and 3) the EU's efforts on aviation security over the last decade and the results of these.

3-2--Theoretical framework.

Given the subject matter of the PhD, this thesis utilises established political science theories to construct the original theoretical framework. This section is concerned with some of the basic principles of social science theory, more particularly that concerned with the study of political science, and how this relates to the research project at hand. As such this section looks at the purpose of theory and the type of theory to be used, followed by the areas of theory that tend to figure within the style of theoretical approach taken.

First, one must consider the purpose of theory. It is widely recognised that there are three functions of theory – to allow explanation or understanding, description or analysis, and, critique or normative intervention. This research project is concerned with those geared towards the first function: it seeks to provide an explanation or allow an understanding, which will hereafter be referred to as explanation theories. Explanation theories ask why an event came about and are concerned with understanding how. In other words, they seek to ascertain the reasons or causes for something to happen. An important point relating to explanation theories is that they are generally considered to 'differ predominantly in relation to the degree to which they consider their arguments generalizable [sic] or dependant on specific contexts' (Wiener & Diez, 2009: 17). For the purposes of this research project it is considered that any and all assumptions attributed to the theories used in constructing the theoretical framework are case-specific – that any arguments

formed using the framework are valid only for, and in the context of, this research project.

Second, one must clarify the object of the theory to be used, which can also be referred to as the 'area' of theory. For the purpose of this research project and its framework, it is taken that there are three areas theory can be considered to deal with: polity, policy and politics. For the purposes of this research project, the three terms are defined as; 'polity' is taken to mean the institutions of a political community and the community itself, 'policy' is the actual measures legislated and enacted to deal with specific issues, and 'politics' is the process of policy-making with particular emphasis on the relationships between the various actors involved. Whilst it must be noted that given the inter-relatedness of these aspects, it is unlikely any research will solely consider just one, however it is equally unlikely that all would be considered to the same degree. For example, 'a theoretical approach such as neofunctionalism might aim at explaining integration outcomes (here polity), while focusing on their explanation (here politics)' (Wiener & Diez, 2009: 19).

3-2.1--Theory concerning policy processes.

As this research project is concerned with the creation of a new EU policy area and its product, this section considers the theory associated with both the policy process in general and the frameworks associated with the EU policy process. There are four recognised stages of the policy process. These are: problem identification and agenda setting, formulation and adoption, implementation, and evaluation (Kingdon, 2011; McCormick, 2008). In order to initiate policy in a particular area, political agreement must be reached on the existence and definition of a problem. Following identification the decision must be made to solve said problem through adding that particular policy concern to the government's remit. This usually occurs as a result of elected leaders picking topical issues based on current public opinion and media coverage (Kingdon, 2011). In terms of the EU policy choices generally occur as a result of internal pressure from the integration process (Bache & George, 2006). The various institutions of the EU generally differ in their approach to agenda

setting – the Commission tends to take a supranational approach, whilst the Council is driven by national interests, and the main influence on the EP is the interests of the voters (McCormick, 2008). Furthermore, the complex and varying interests of the Member States are determined by their particular needs and/or priorities which increases the difficulty of identifying problems at the EU level as well as obtaining support for a single unified response. This is especially prevalent in areas concerning relations with other countries (Nugent, 2010).

Once a problem is identified, a response must be formulated and agreed. (Kingdon, 2011; McCormick, 2008). In terms of the EU options are debated by the Council and then proposals developed. The Commission formulates policy. The proposed policy is considered by one or more of the following: the Committee of Permanent Representatives (Coreper), the Council and the EP, before it is adopted (Nugent, 2010). It must then be implemented, this is the most important step in the policy process – 'the point at which the goals and objectives of government result – or fail to result – in real change for the governed' (McCormick, 2008: 108). The Commission works with other institutions to ensure implementation. Namely, the governments and organisations of Member States. In most cases the Commission is dependent on the agencies of national governments, the EP and even interest groups, the media and the public to monitor progress (McCormick, 2008; Nugent, 2010; Wallace & Wallace, 2007). The final stage of the policy process is to assess whether or not the legislation is working. In terms of the EU those involved in this step consist of the Commission, the Council, and the EP, combined with representatives from both international and national interest groups (McCormick, 2008; Nugent, 2010).

Helen Wallace & William Wallace argue that 'policy-making in the EU is not carried out through a single and predominant process but rather through several different and contrasting policy modes' (2007: 340-1). There are four such methods which are most commonly considered: the community method, intensive trans-governmentalism, the open method of cooperation (OMC), and centralised decision-making (Nugent, 2010; Wallace & Wallace, 2007). The community method

is the method used for all law-making which can be summarised as having three main stages: Proposal, Advising, Decision. In its original incarnation the method was that the Commission had the lead role in creating policy and drafts all new legislation. The EP had an advisory capacity and the Council was the final decision-maker, usually through qualified majority voting (QMV). This changed with the advent of co-decision which strengthened the role of the EP giving it shared decision-making status with the Council (Nugent, 2010; Wallace & Wallace, 2007). Intensive trans-governmentalism is an approach of inter-governmental cooperation where the focus is not law-making but cooperation between governments. Policy can be drafted and proposed by either the Member States or the Commission and decisions are made by the Council in unanimity. (Nugent, 2010; Wallace & Wallace, 2007). OMC is where the lead actor sets broad goals and guidelines which are voluntary as opposed to having legal status. The Member States then independently draw up national action plans to achieve the goals through conformation to the guidelines. Member States submit annual reports on their progress to the relevant part of the organisation who assists with and monitors Member States activities including producing reports. In EU terms the organisation which is the lead actor is the Commission (Bache & George, 2006; Nugent, 2010; Wallace & Wallace, 2007). In regards to aviation security this approach has always been the preferred approach with ICAO and the European Civil Aviation Conference (ECAC) being the relevant organisations. The final framework is centralised decision-making. This is where EU supranational institutions have strong if not total decision-making powers and generally operate with a high degree of independence. This is most often the case in issues that have been de-politicised where it is felt necessary to shield decision-makers from political pressure. With regard to the EU, this is the case in two areas: Competition – where the Commission has not the lead but total control albeit subject to lobbying from Member States and interest groups, and the Eurozone Monetary Policy – where the controlling institution is the European Central Bank (Nugent, 2010).

3-3--Neofunctionalism and spill-over.

This section is concerned with a particular type of integration theory: neofunctionalism. It looks first at what neofunctionalism is including the criticisms of it. The section then considers the concept of spill-over before finishing by arguing the relevance and applicability of neofunctionalism and spill-over to this particular research project.

3-3.1--Origins of neofunctionalism.

Primarily neofunctionalism has its philosophical antecedents in 'the juncture between functionalist [and] federalist theories' (Wiener and Diez, 2009: 45). As such this section assesses the theories of functionalism, federalism and federal functionalism.

Functionalism was primarily a post-Second World War approach to inter-state relations aiming to ensure peace, and was influential in designing the UN. It is David Mitrany who is considered to have been the principal writer concerned with the theory of functionalism. Mitrany believed nationalism to be the main root cause of war. Functionalism was Mitrany's idea on how to avoid conflict. This was principally that 'through a network of transnational organizations[sic] on a functional basis, one could constrain states and prevent future war' (Weiner and Diez, 2009: 7). Mitrany defines functionalism as the theory of connecting 'authority to a specific activity, [and] to break away from the traditional link between authority and a definite territory' (1966: 27). Functionalism is an integration theory which 'is based on the idea of incrementally bridging the gaps between states by building functionally specific organizations[sic]' (McCormick, 2008: 6). Functionalism considers that integration is better achieved by practitioners than policy-makers. This was the reasoning behind the theory's principle which was 'to take individual technical tasks out of the control of governments and to hand them over to' newly created individual international agencies which would each have authority over a specific functional area (Bache and George, 2006: 6). Functionalism in essence

advocates agencies which are technical task-forces with no national bias performing the functions of integration rather than governments. Mitrany believed that if in certain areas states cooperated by forming specific bodies responsible for the integration in those areas, it would encourage cooperation in other areas.

Mitrany's work on functionalism originated in response to his disagreement with the ideas of federation. Whilst Mitrany's ideas of functionalism aimed to reduce the role of governments in integration, federalism was concerned with the transfer of political power. Federalism originated after the Second World War when in 1946 war-time resistance movements formed the European Union of Federalists. (Bache and George, 2006). Similar to functionalists, federalists believe nationalism to be a root cause of war and sought to avoid future conflict through the creation of a federal European state which would supersede the existing sovereign nation states thus negating the threat of nationalism. The theory of federalism is most commonly associated with Altiero Spinelli. Spinelli argued that 'states had lost their political rights because they could not guarantee the safety of their citizens' (McCormick, 2008: 6). In essence, federalism is a form of multi-level governance in which there is explicit division of power between the various levels which requires mutual participation between them. Spinelli called his federalist strategy 'democratic radicalism'. It later came to be known as the 'constitutional method' due to the focus on an elected parliamentary assembly playing a major role in the drafting Europe's treaties, making it the voice of the European people thus gaining the support of popular opinion for its intended federation.

This contrasted with the 'competing political strategy of Jean Monnet who became Spinelli's great rival in the concerted post-war drive to champion a federal Europe' (McCormick, 2008: 32). Monnet headed the commission which drew up the Schuman plan for the European Coal and Steel Community (ECSC), and 'it was through his experiences in this task that Monnet came to appreciate the economic inadequacy of the European nation state in the modern world' (Bache and George, 2006: 7). Monnet aimed to create a European common market and believed that a successful economic community required the development of supranational

institutions which would plan and adopt common economic policies. Monnet acknowledged that to integrate all aspects of the economy across Western Europe was too large a task and so chose to start with coal and steel. This integration would be the basis for economic development as a first step towards a federation of Europe. This strategy became to be described as federal-functionalism. Neofunctionalism, which is considered in the following sections, has roots in all three of the theories of functionalism, federalism and federal-functionalism.

3-3.2--The theory of neofunctionalism.

Neofunctionalism is a school of thought originally proposed by Ernst Haas in his book *The Uniting of Europe* (1958). The theory was then further developed by Haas and Leon Lindberg during the late 1950s and early 1960s. Despite the attempts of scholars such as Stuart Scheingold, Philippe Schmitter and Joseph Nye to revise the theory during the late 1960s and early 1970s neofunctionalism was declared obsolete by Haas himself in the mid 1970s. This may well be due to Haas' adoption of the view that regional integration research needs to consider wider issues of interdependence, which resulted from the criticism of neofunctionalism's perceived neglect of the wider world context (Niemann & Schmitter, 2009). The theory was, however, revived during the late 1980s and the 1990s, by other scholars including Schmitter, Alec Stone Sweet and Wayne Sandholtz who between them undertook both revision and development of the theory.

As previously mentioned, neofunctionalism at its essence is an integration theory. McCormick (2008) argues that certain pre-conditions are required for integration to successfully occur. These are that public attitudes need to move from focusing on nationalism to cooperation, the elites must choose to promote integration for practical not selfish reasons, and that there must be the transfer of complete power to the new truly supranational authority. Neofunctionalism's two principle contributors Haas and Lindberg, differ however on their definitions of what constitutes 'integration'. Haas describes integration as:

> the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions, possess or demand jurisdiction over the pre-

> existing national states. The end result of a process of political integration is a new political community, superimposed over the pre-existing ones (1958: 16).

Lindberg on the other hand, considers integration to be:

> (1) the process whereby nations forego the desire and ability to conduct foreign and domestic policies independently of each other, seeking instead to make joint decisions or to delegate the decision-making process to new central organs: and (2) the process whereby political actors in several distinct settings are persuaded to shift their expectations and political activities to a new centre (1963: 6).

Whilst these two definitions contain many differences, there are a number of points on which the two scholars agree. One of the most important in terms of this research project is that integration is not solely concerned with a particular end-state but is rather the process itself. Another is that the creation and roles of new regional institutions and the resulting changes in views and activities of the actors involved are fundamental components of integration. In a departure from Haas' view of integration this research project for the theoretical framework instead utilises some of the view perpetuated by Lindberg. Specifically, that integration has no end point, therefore it is constantly in-flux with respect to depth or breadth, and that political actors (on an international level) may shift activities and expectations to the new centre (the regional supranational institution) but not necessarily their loyalties.

3-3.3--<u>The concept of spill-over.</u>

It has been said that neofunctionalism 'focuses on the importance of the supranational actors in the integration process, with particular emphasis on transnational elites who supposedly facilitate integration' (Hayland & Schieritz, 2004: 30), and that the 'aim of neofunctionalism is explaining integration outcomes while focusing on their explanation' (Wiener & Diez, 2009: 19). This is done through the theory's principal concept of spill-over. Spill-over is a concept which deals with how integration in one particular area causes or furthers integration beyond the boundaries of that area, due to the inter-connectedness of political issues. When expressed simply spill-over can be taken as 'sectoral integration would produce the unintended and unforeseen consequence of promoting further integration in additional issue areas' (Pollack, 2010: 18).

Since Haas and Lindberg first promoted the concept of spill-over, many other scholars have offered their views on, and definitions of, the concept. Whilst these definitions differ dramatically across the works of the various scholars within the field, it is widely accepted that there are two main types of spill-over: functional and political (Bache & George, 2006). Functional spill-over can be understood as: as a result of the effectiveness of institutions and existing policy being undermined by 'incomplete integration' there is a need for these institutions to further spill-over with either new policies or by creating new institutions. In other words the inter-connectedness of economies means that integration in one sector causes integration in other sectors. Political spill-over can be explained as: existing EU supranational structures creating new political organisations to deal with new increased responsibilities and powers. One important thing about political spill-over is that it increases integration in certain areas but also increases the purview of EU competences. Another aspect of political spill-over is that once integration of different functional sectors occurs, interest groups change from influencing national governments to regional institutions. Justin Greenwood states there are two aspects to political spill-over. First that there are 'demands of interests for further integration to arise at the supranational level, often nurtured, encouraged and even manipulated, by supranational institutions interested in an expansion of European integration' (2003: 254). The second is that political spill-over 'involves the transfer of activities of civil society and even loyalties, from the national to the supranational level, in which interests groups play a key role in socializing [sic] civil society to the benefits of European integration' (2003: 255).

In addition, related concepts such as spill-around, build-up, muddle-about and spill-back have been proposed (McCormick, 2008). Schmitter provides the following definitions for these:

> (1) 'spill-around', the proliferation of functionally specialized [sic] independent, but strictly intergovernmental institutions; (2) 'build-up', the concession by member states of greater authority to the supranational organization [sic] without expanding the scope of its mandate; (3) 'muddle-about', when national actors try to maintain regional cooperation without changing/adjusting institutions; and (4) 'spill-back', which denotes withdrawal

> from previous commitments by member states (Niemann & Schmitter, 2009: 55).

The four concepts detailed above are alternative responses to spill-over created in response to Schmitter's rejection of Haas' initial assumption that spill-over is automatic.

As this section has shown spill-over is mainly considered to be concerned with integration from one policy area to another. This thesis considers this to be horizontal spill-over. Spill-over is however, also suited to explain expansion within a policy sector. This is justified through Lindberg's fuller description of spill-over: 'a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action' (1963: 10). This thesis considers this to be vertical spill-over. Both 'build-up' and 'spill-back' as defined by Schmitter (2009) can also be applied to vertical spill-over. Unless stated otherwise, where spill-over is mentioned in the thesis, it should be assumed to mean horizontal spill-over.

3-3.4--Criticisms of neofunctionalism and spill-over.

The theory of neofunctionalism started to be subjected to considerable criticism from the mid 1960s onwards. A prominent critique is that neofunctionalism lacks the ability to be generalised and that it cannot provide a theory of regional integration that can fit all situations. In addition its usefulness is further questioned by critics through the argument that it can only successfully be used for one sort of research question: why questions specifically those which are aimed at explaining integration (Niemann & Schmitter, 2009). A frequent criticism that is of particular interest to this research project is the challenging of Haas' original assumption that spill-over is automatic (Keohane and Nye, 1977). As such, later attempts to reform or develop the theory have tended to acknowledge this criticism and respond by including likely conditions for spill-over occurring. These criticisms whilst they may be valid do not prevent the theory from being a sound explanatory tool if used in certain situations. In terms of this particular research project, the various criticisms mentioned above are of little concern.

The critique that neofunctionalism cannot be generalised and lacks the ability to provide an explanation to fit all situations is negated by the inclusion in the framework of the other two theoretical concepts. The criticism regarding neofunctionalism only being suitable for 'why' questions regarding integration is countered by the fact that it is precisely this type of question that this research project is concerned with answering. The issue of Haas' assumption that spill-over is automatic, is mitigated by both the subsequent development of the theory to include likely conditions and the fact that there is a proven spill-over in the case of this project. In short the criticisms are irrelevant as neofunctionalism has been used to in part, answer a why question seeking to understand integration in a specific situation where there is a definite spill-over.

3-3.5--Neofunctionalism's opposing theory: Liberal Intergovernmentalism.

The main opposing theory to neofunctionalism is Intergovernmentalism. Intergovernmentalism has its origins in the realist school of thought on international relations theory. The common view is that in international relations, states are the main actors and the main political relations occur between national governments.

Intergovernmentalism was an argument made by Stanley Hoffmann against neofunctionalism. Specifically there were three aspects of neofunctionalism with which Hoffmann disagreed. First, that European integration needed to be considered in a global context as "[r]egional integration was only one aspect of the development of the global international system" (Bache & George, 2006: 12). Second, Hoffmann argued that national governments were the controlling actors in European integration, and that they managed both the pace and nature of it to protect national interests. Third, Hoffmann believed that integration would only occur in contained technical functional sectors if national interests coincided, that it would not spill over, and not to sectors such as defence and national security.

The development of intergovernmentalism theory to form liberal intergovernmentalism is the work of Moravcsik. Liberal Intergovernmentalism is

more rigorous version of intergovernmentalism. There are three elements to liberal intergovernmentalism.

> "First, there is an assumption of rational state behaviour … Second, there is a liberal theory of national preference formation … Third, there is an intergovernmentalist interpretation of inter-state relations" (Nugent, 2010: 433).

Unlike neofunctionalism, intergovernmentalism whilst acknowledging their possible involvement does not place much emphasis on either supranational actors, transnational actors or non-governmental actors within states. This thesis is concerned with the post-9/11 legislating of aviation security - which previously was mainly regulated by non-governmental organisations - across national borders by supranational institutions, therefore significantly limiting the applicability of such a theory.

3-3.6--Applicability of spill-over.

Given that the main part of the research question this research project is concerned with is a 'why' question, Wiener & Diez's argument that neofunctionalism is an explanatory integration theory provides a degree of justification for using the theory as the foundations for a framework for this research project. In 1958 when Haas developed the theory he suggested that at the sub-national level those operating within an integrated area would need to interact with the international organisation responsible for managing that area. Given the way the regulatory system of aviation security worked prior to 9/11 specifically the relationship between national civil aviation authorities and ICAO this would further support the use of neofunctionalism as a theoretical base for an analysis of EU involvement in aviation security in the post-9/11 era.

Caroline Webb (1977) claims that those connected with neofunctionalism conceptualised a 'Community method' of policy-making in the EU. This was that they described EU policy-making as a system where an entrepreneurial institution (i.e. the Commission) drove the integration process which consisted largely of the Member States engaging in supranational discussion and decision making. This explanation of the Community method is incredibly similar to the way the

established aviation security regulatory system works if the institution in question was taken to be ICAO, and also could be used to describe the post-9/11 system within the EU, with the institution indeed being the Commission.

Again, this further supports the use of neofunctionalism in this particular research project. Greenwood (2003) argues that the role of business interests in core economic fields played by EU integration and the achievement of the common market supports the neofunctionalist theory. As transport policy including aviation was a primary aspect in establishing the common market this lends credence to using this particular theory to explain and analyse European integration in a 'new' area of aviation – aviation security. Further justification for using neofunctionalism and spill-over as the foundation of the theoretical framework can be seen by

> 'the way in which parts of the Commission have worked demonstrates very clearly that the path to European integration laid out by neofunctionalism has been the one which the Commission has very deliberately taken in the hope of achieving integration' (Greenwood, 2003: 255).

Whilst paying only the briefest consideration to aviation security Kassim and Stevens (2010) note that in the aftermath of 9/11, the EU widened its existing cooperation on safety into the area of security. They also acknowledge that Community actions in certain facets of aviation security have led to Community actions in other related aspects of aviation. Thus further supporting the use of spill-over as an analytical tool in the theoretical framework for the particular subject this research project is concerned with. Neofunctionalism and spill-over do not alone provide a comprehensive enough framework to fully analyse the data relevant to answering the research question this research project is concerned with.

3-4--Focusing Events.

This section assesses a theoretical concept popularly associated with policy-making research, namely that of focusing events. Focusing events as a concept was used in conjunction with neofunctionalism and spill-over as detailed in the previous section and policy entrepreneurship which is detailed in the following section. A focusing

event is an unanticipated event that highlights a certain issue. This pushes a particular problem to the attention of governments and other decision-making bodies. John Kingdon in his description of what a focusing event is, suggests that depending on the nature and subject of the event it can become 'a powerful symbol that catches on' (2011: 95). Birkland argues that focusing events create 'initial enthusiasm for the issue—among the media (which can serve as a proxy for public attention) and policy makers' (2004: 342). Focusing events as a concept is in the literature frequently associated with agenda setting theory. Indeed Kingdon (1984) in his seminal work on the subject considers the concept as one of the primary causes for a problem gaining prominence on the agenda. Whilst the concept of policy entrepreneurship is also most commonly associated with Kingdon's writing on agendas, this project is not concerned with agenda setting theory in the main.

Focusing events when expressed in the most simplistic form are those which attract attention to a particular issue. This is both in reality and also as a theoretical concept, something which is not purely limited to agenda setting. In fact Schmitter when discussing likely causes for spill-over allows that on occasion rather than being a natural evolution of policy, events can cause spill-overs to occur ahead of time (Niemann & Schmitter, 2009). Greenwood (2003) further supports this by arguing that in certain cases new competences are developed as a result of political reactions to key events causing the immediate occurrence of what would have been a likely future spill-over from a related policy area into the current topic of the day. This, therefore, validates the inclusion of focusing events as a theoretical concept into the framework for this research project. As shown in the previous paragraph, the literature provides the evidence for a sound argument in favour of using the concept of focusing events in combination with the neofunctionalism theory concept of spill-over. In addition, the justification for using the concept of focusing events in combination with the concept of policy entrepreneurship is also prominent in the literature as explained above.

There is, however, prominent criticism levelled at the use of focusing events as a theoretical concept in policy research. This is that the concept of focusing events on

its own is not sufficient to explain why policy changes occur. Antony Downs (1972) further argues that focusing events alone do not automatically constitute policy developments. Downs argues that the period of awareness caused by a focusing event is short and that once the issue is no longer so prominent in public consciousness, policy-makers tend to turn their attention away from the issue, in most cases due to the significant financial requirements of taking action. This criticism is especially valid given the subject matter of this research project. Wallis (2003) and Wilkinson (1999) are the most prominent in a mass of voices who have argued that history has proven the trend of developments in aviation security including those of a legislative nature to be sacrificed on the altar of profit. This research project counteracted this criticism by using the concept of focusing events as simply one part of the framework supported by other applicable concepts.

3-5--Policy entrepreneurship and SPE.

This section focuses on the third aspect of the theoretical base the analysis conducted as part of this research project implemented. It assesses the theory of SPE including the concept of policy windows, and the applicability to this project.

3-5.1--The concept of policy windows.

Kingdon (2011) in his revision of the 'garbage can model of organizational [sic] choice' proposed by Cohen et al, identified three process streams: problem, policy and politics. The explanation is given that it is a policy window when these three streams come together or 'couple'. Kingdon goes on to state that the opening of policy windows can be both predictable for example in the case of a particular program reaching its renewal date or unpredictable for example when an issue unexpectedly gains prominence. Kingdon defines policy windows as 'an opportunity for advocates of proposals to push their pet solutions, or to push attention to their special problems' (2011: 165), this is further supported by Kaunert who argues that policy windows provide 'an opportunity for advocates to push for their solutions' (2012: 36).

Policy windows in terms of this research project is taken to mean the 'window of opportunity' in which a particular issue is prominent enabling action to be taken in the form of policy. Whether the opening of a policy window is predictable or not, the one constant aspect is related to the time factor of policy windows. Primarily this is that policy windows are infrequent. It is further argued by Kingdon that policy windows do not remain open for any significant length of time that the opportunity for action is in fact short lived. Kaunert supports this paying note to the fact that policy entrepreneurs often have prepared their solutions before an issue becomes prominent that in fact they 'lie in wait for a window to open and therefore seize the right moment' (2011: 37). The time sensitive nature of an open policy window is akin to the period of awareness caused by focusing events and reinforces the case for using the two concepts together.

3-5.2--<u>The concept of policy entrepreneurship and thus SPE.</u>

As mentioned in the previous sub-section policy entrepreneurs exploit the occurrence of policy windows to 'push' a solution to a certain problem. Kingdon states however that policy entrepreneurs do more than just push their proposals, that in fact '[t]hey lie in wait—for a window to open' (2011: 181) and that the 'policy entrepreneur who is ready rides whatever comes along. Any crisis is seized as an opportunity' (2011: 182). This however requires policy entrepreneurs to if not pre-empt the opening of policy windows at least to have solutions prepared just in case, so they can be ready when they do. It is argued that policy entrepreneurs are generally not solely responsible for an issue gaining prominence on the agenda or any resulting policy, as this requires multiple actors rather that they are the central figures in bringing this about. Kingdon describes policy entrepreneurs as 'advocates who are willing to invest their resources—time, energy, reputation, money—to promote a position' (2011: 179). Further elaboration is provided in the attribution of three qualities deemed necessary for an actor to be considered as a policy entrepreneur. 'First, the person has some claim to a hearing … Second, the person is known for his political connections or negotiating skill … Third, and probably most important, successful entrepreneurs are persistent' (2011: 180-1).

A policy entrepreneur must therefore be an actor who is in a position to have the solution they propose heard, the power to have it considered for legislating and the persistence to see it through. A supranational policy entrepreneur therefore is an actor who has both the ability and the authority to fulfil the role of a policy entrepreneur in a supranational setting. Given the organisation and function of the legislature of the EU, any policy entrepreneur wishing to affect Community policy would therefore have to be supranational in scope. Kingdon refers to policy entrepreneurs as individuals, however the review of the literature on SPE provided in Kaunert (2012) argues that especially in terms of the EU, policy entrepreneurs can be actors of any level: individuals such as Presidents, Councillors, Commissioners and staff but also institutions for example the Commission.

3-5.3--Applicability of SPE.

Throughout the literature on aviation security there is the prevalent argument that developments only occur after successful attacks highlight shortcomings. That in terms of government action, policy-makers only turn legislative attention to the issue when it becomes a matter of focus within public opinion - which usually occurs in the wake of an incident. Kingdon (2011) also states repeatedly that on the subject of transportation, policy changes tend to occur as a result of policy entrepreneurs using policy windows resulting from focusing events to push for solutions. It can therefore be argued that the concepts of policy entrepreneurs and policy windows are not just applicable but vital to a strong framework for analysing the development of aviation security policy.

The focus of Kingdon's work on policy entrepreneurship is that of the legislative process of the US, as such it is designed for use in a federal political system. This does not however render it inapplicable. Kaunert (2012) discusses the writings of many scholars on the development of SPE, arguing its applicability to the study of politics within the EU, especially those focused on the Community level. Given that this research project is concerned with the EU as an entity becoming involved in the

policy area of aviation security, the literature thus provides sound argument for the applicability of SPE as one part of this theoretical framework.

3-6--How the theories are to be used.

The previous sections detailed the three theoretical concepts which this framework is comprised of. This section details how the concept of SPE, and the concept of focusing events, as well as the neofunctionalist concept of spill-over considered in the previous sections are combined to form the theoretical framework for this research project.

This research project is concerned with answering the following question: **To what extent has EU involvement in aviation security occurred as a result of 9/11 and what effects has this had?** In order to be able to answer this question, certain meanings must first be clarified. In the context of the research question 'involvement' refers to political involvement. As the question is concerned with EU involvement, this political involvement is that conducted by the governmental institutions of the EU. This includes both internal policy-making and EU cooperation with other countries. It is not however concerned with cooperation beneath the Community level i.e. cooperation between the individual Member States, as this occurred prior to 9/11 through organisations that operate independent from the EU. The question is primarily concerned with the extent to which this political involvement at the EU level was as a 'result of 9/11'. In order to assess this the criteria which has been used is whether or not this involvement occurred as a direct response to 9/11. This direct response includes identifying and resolving the shortcomings that were highlighted by 9/11, and both creating and implementing measures to ensure safety against future attacks either in of the methodology of 9/11 or in response to a new perceived threat.

This research project is primarily concerned with two issues: 1) the reasons for, and the process through which the EU began legislating aviation security, and 2) the

policy and practical effects of the EU's legislative efforts on aviation security. Neither issue can be explained using just one of the three theoretical concepts detailed in the previous sections. The issue of EU involvement in aviation security cannot be explained by just the neofunctionalist concept of spill-over, as it shown in the following chapters that the likely conditions for spill-over were present before 9/11. Nor could SPE alone have sufficed, as it is shown in the empirical chapters that the relevant policy windows were also present prior to 9/11. Focusing events is necessary to explain why the EU began legislating aviation security as a result of 9/11, however focusing events alone cannot explain how EU legislative efforts came to be. The second issue – that of the effects of the EU's legislative efforts in aviation security cannot be explained using focusing events. Neither SPE or spill-over alone would have sufficed either, in order to analyse this issue, the thesis required that both concepts be used in conjunction with one another. It is therefore necessary that the theoretical framework included all three concepts of spill-over, focusing events and SPE.

In order to explain exactly how these concepts have been combined to form the theoretical framework, it is necessary to outline exactly what each concept contributed to answering the research question. The question can be separated into its constituent parts in a number of ways. The question, when reduced to its most simplistic form, primarily seeks to ascertain the cause and effects of the EU becoming involved in aviation security. First, in terms of the first half of the question – the cause, the EU becoming involved in an area that is a new political competence is in essence an occurrence issue and as such can be analysed using both focusing events, and SPE.

Second, in terms of the latter half of the question, the effects of EU involvement in aviation security, this too can be broken down further. There are two types of effects which for the purposes of this framework are termed: one - the political effects and two - the policy effects. The political effects refers to the effect EU involvement has had on EU political competences, which again is an integration matter and can be addressed using a combination of neofunctionalism and spill-

over and SPE. The policy effects refers to the actual content of EU policy on aviation security, the specific subject matter of the legislation itself. This can also be explained and analysed using both SPE and neofunctionalism and spill-over.

Third, and finally, the question can be divided up by the empirical chapters which were used to answer it. The case studies look at: the occurrence of EU involvement in aviation security which requires focusing events and SPE for the analysis; EU initial efforts in aviation security which requires both spill-over and SPE to analyse the 'why' and SPE to analyse the 'how' of this; the further development of aviation security policy – achieving workable common basic standards utilises spill-over for the analysis. Furthermore, EU attempts to ensure the implementation of the standards covered in the latter two empirical chapters, also requires both spill-over for the 'why' and SPE for the 'how'.

To state this truly and simply, this research project is attempting to solve the following two equations: $x \rightarrow (AS + EU) \rightarrow y$ and $(AS + EU) \equiv z$, where x is the cause and y is the political effect of, and z is the policy effect of, the EU becoming involved in aviation security $(AS + EU)$. The table shown below demonstrates how the various elements of the theoretical framework are applied to solve these equations, and also to which case chapters they apply.

$\boldsymbol{x \rightarrow (AS + EU)\ldots}$	$\boldsymbol{\ldots(AS + EU) \rightarrow y}$	$\boldsymbol{(AS + EU) \equiv z}$
Focusing events, SPE	Spill-over and SPE	Spill-over and SPE
Chapter 6	Chapter 6	Chapters 7 & 8

Figure 1 – The constituent parts of the research question

In terms of this research project, the concept of focusing events is incorporated into both the concepts of SPE and spill-over. The neofunctionalist concept of spill-over can be summarised as: a focusing event renews/strengthens efforts in the relevant political areas which facilitates spill-over occurring creating new competences. This is represented by the horizontal path diagram in the illustration below. SPE can be summarised as: a focusing event that causes a policy window to open which allows

a policy entrepreneur to push a new item on to the agenda which results in the creation of a new competence. This is represented by the vertical path diagram in the illustration below.

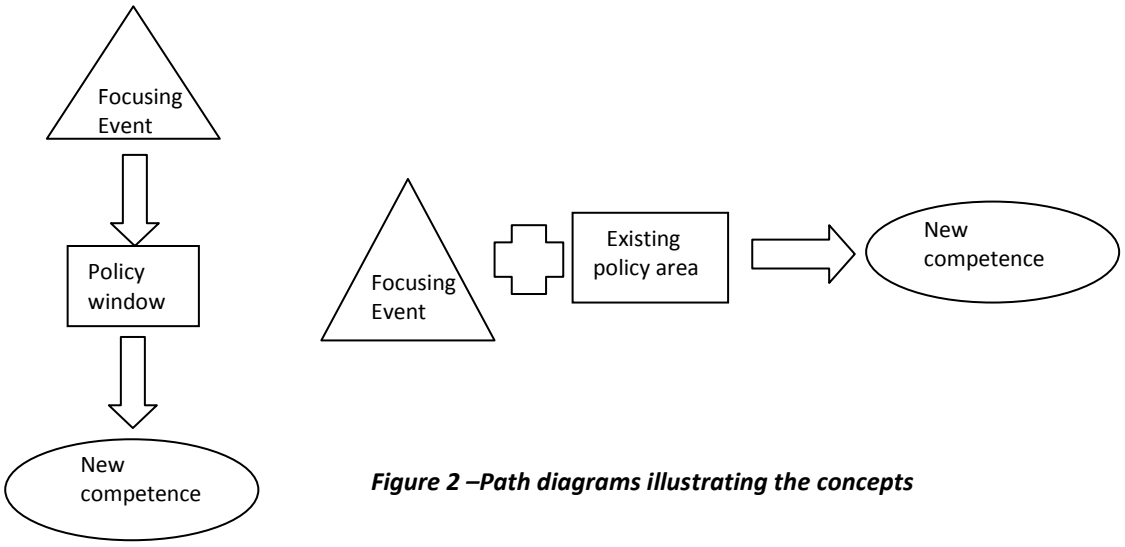


Figure 2 –Path diagrams illustrating the concepts

As previously mentioned, in all three of the empirical chapters, the two different aspects of the framework are used in conjunction with one another to answer the research question by solving the equations detailed in *Figure* ***1*** above. The diagram below depicts the inter-connectivity of the various theoretical concepts this framework is based on, illustrating how the concepts are used in relation to one another.

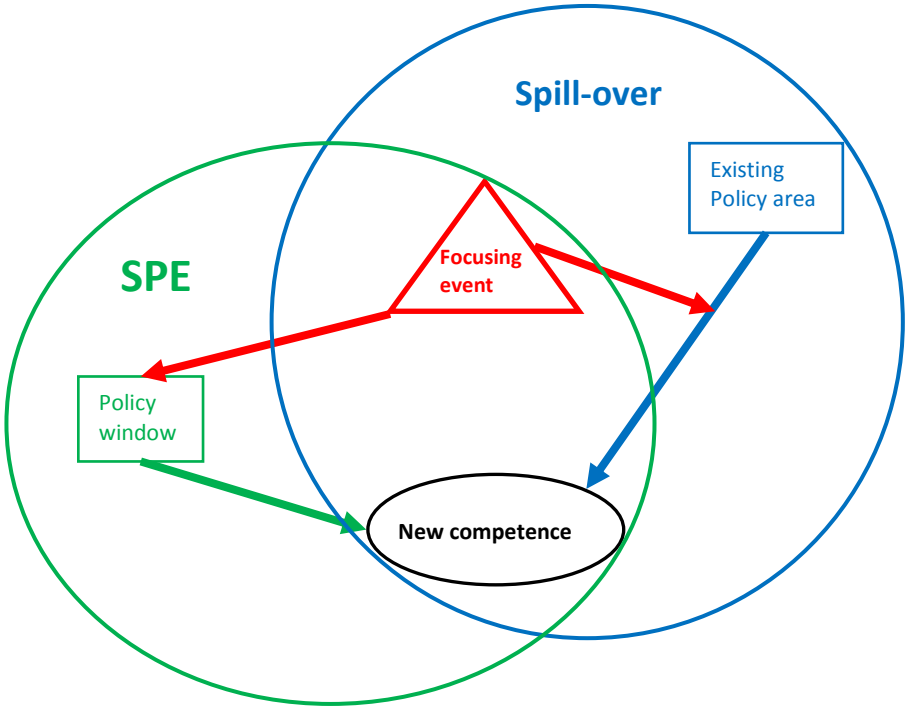


Figure 3 – Theoretical connections model

3-7--Conclusion.

In order to construct a theoretical framework for this research project, this chapter has provided a brief explanation of aviation security. Including: its history, focus, how it is enacted and most importantly how it was regulated (and by whom) prior to 9/11 – both the international system as a whole and specifically within the EU Member States. The purpose of this was to provide the base point for this research project and a reference point for the later analysis concerning where the EU 'fits' in the international aviation security system.

General aspects of political theory such as the purpose of theory and the type of theory that is used, followed by the areas of theory that tend to figure within the style of theoretical approach taken, have been considered. This was in order to provide background to the specific theories and concepts chosen: focusing events, neofunctionalism and spill-over, and SPE. The school of thought known as neofunctionalism is, in essence, an integration theory and its principle concept of spill-over provides one of the two main aspects of this project's theoretical foundations. This is because the explanation of spill-over: that integration in one area leads to integration in related areas, provides a sound base for analysing the effects of EU involvement in aviation security. The second of the two main aspects is SPE: that supranational actors seize opportunities to push for particular policy, which can aid in explaining both the cause (and to a degree) the effect of EU efforts in aviation security. The incorporation of the concept of focusing events into both the concepts of spill-over and SPE, and their subsequent combination constitutes a sound analytical tool, and the chapter has detailed the justification of this as evidenced by the literature. This is, in short, answer the question: **To what extent has EU involvement in aviation security occurred as a result of 9/11 and what effects has it had?** In order to analyse the development of EU involvement in aviation security and the effects of this, the research project is centred on three particular empirical chapters. These are: 1) the creation of aviation security as an EU competence, 2) initial efforts at legislating and implementing aviation security

standards, and 3) development and improvement of EU involvement in aviation security.

4--Methodology.

4-1--Introduction.

After a short introduction briefly detailing the subject matter of this project's research, this chapter outlines how the research undertaken as part of this project was conducted. This is done in five sections: the first explains the research strategy used; the second section pays heed to research methodologies that were not selected before justifying the one that was; the third section turns its attention to the legal and ethical issues related to this research; and the final section details how the theory contained in the first three sections was implemented in practice with specific focus on the method of testing and indicators used. The chapter then concludes by providing a summary explanation (and justification) of the research methods chosen for this project.

In the literature review at the beginning of this thesis it was established that the subject it is concerned with, that of EU aviation security in the post-9/11 era, is a field which is considerably lacking in scholarly attention. In providing a theoretical framework for the project, the previous chapter has explained how integration theory (specifically neofunctionalism and spill-over) and SPE will be used to analyse the EU's involvement in the area, and the effects of this. This thesis is attempting to answer the following question: **To what extent has EU involvement in aviation security occurred as a result of 9/11 and what effects has this had?**

4-2--The logic of enquiry.

This section is concerned with the research strategy used in this project. The particular research strategy used for any given research project relates to a number of factors amongst which is the researcher's existential perspective and therefore

their views on knowledge. This section therefore looks at the research strategy chosen for this project and related ontological and epistemological positions.

4-2.1--The research strategy chosen.

This project has been conducted using a combination of research strategies, the deductive strategy was the main strategy used, with elements of the inductive strategy being used for certain aspects of the project. Whilst the two strategies are in fact opposites, it is perfectly viable for them to be used in conjunction with one another (Burnham et al, 2004). The inductive strategy is one of theory building and the deductive strategy is one of theory testing. Inductive research begins with data collection, the data is then analysed in order to develop 'generalizations [sic] that, with further testing, can become law-like propositions to be used to explain aspects of social life' (Blaikie, 2009: 100). The deductive research strategy works in the reverse order to the inductive. Deductive logic fashions that if data collection is to be useful, one must at least have an idea of what to look for. It begins with an observed regularity that needs to be explained and theory is then acquired or constructed. The hypothesis derived from the theory then serves to give direction to the data collection, the results of which are then used to test the hypothesis (Blaikie, 2009: 100-1). One issue with inductive logic is that it requires the observer to discard any preconceived notions of how the world works before beginning, and that all data must be collected using objective methods. Inductive logic also requires that it must be understood that any findings produced are tentative and will be subject to change if further research produces contrasting findings. The inductive strategy has its roots in the philosophy of positivism, and is commonly associated with answering 'what' research questions. In addition, the central tenet of inductive logic is that it requires generalisations based solely on observations (Blaikie, 2009). Therefore it is not perfect.

Deductive logic agrees with the notion that inductive logic is flawed. It states both that: data collection is selective and requires interpretation, and observations alone do not provide reliable foundations for theories. Another aspect of deductive logic is that it has its roots in Popper's philosophy of critical rationalism and is mostly

associated with answering 'why' questions. This suggests that it is not possible to obtain the truth in social sciences as it will not be known when it is reached, and all that can be achieved is the disproving of false theories (Blaikie, 2009: 103-5).

4-2.2--The ontological and epistemological positions.

Before the positions associated with a particular strategy can be considered, we must discuss what ontology and epistemology are and how they affect a research project such as this. Ontology refers to the theory of being and the nature of the world. In essence it is concerned with a central question: whether a world exists independent of our knowledge of it? Epistemology is the theory of knowledge. It refers to what one can know about the world and how this can be known. The primary concern of epistemology is: if and how it is possible to observe objective relations between social phenomenon (Marsh & Furlong, 2002: 18-19). Simply stated, ontology refers to assumptions concerning the nature of social reality whilst epistemology deals with assumptions regarding the character of knowledge (Burnham et al, 2004: 23). Given that how one sees the world influences how one gets to know it (or researches it), it is inevitable that the ontological perspective of the researcher will influence, but not determine, their epistemological position.

As mentioned above, the different research strategies all have various ontological and epistemological underpinnings. In the case of the inductive research strategy these are as follows. It assumes that the world is 'an ordered universe made up of discrete and observable events' (Blaikie, 2009: 102) and that order this can be represented by suggestions that are universal in nature. Social reality is considered to be complex in nature and consists of causal relations which is most often depicted as a growing 'network of relations between concepts' (Blaikie, 2009: 102). One of the fundamental epistemological underpinnings of inductive logic is that 'trained humans are assumed to be able to produce objective data' and that 'knowledge is considered to be produced through the use of human senses and by means of experimental or comparative analysis' (Blaikie, 2009: 102). The ontological underpinnings of the deductive strategy has some similarities to the inductive, nature and social life are seen as comprising essential uniformities. As far as the

epistemology goes, however the deductive strategy disagrees with the inductive. Senses are not considered an appropriate foundation for theory. It is concerned with generating new knowledge in the form of universal statements which are considered true if they bear relation to 'descriptions of observed states of affairs' (Blaikie, 2009: 105).

The reader must note that the findings of this project cannot be considered completely impartial. They must have been impacted to at least some degree by the researcher's ontological and epistemological leanings. These are: social reality exists independently of the researcher who can never be completely impartial. Whilst senses alone are unreliable foundations, observations may be used in part to generate new knowledge which itself can never be considered absolute but rather only remains true until such time as further research disproves the theory. This section has identified and explained the research strategies which have been used in this project: the deductive research strategy and the inductive research strategy. It has described the main aspects of deductive and inductive logic and the effect these will have had on the research. It has also stated both the ontological and epistemological underpinnings of both deduction and induction. By summarising the researchers own ontological and epistemological views and, therefore, the similarities in point of view, it has detailed one of the reasons why these two research strategies were chosen.

4-3--The methodology selected & the alternatives that were not.

This section is concerned with detailing and justifying both the research strategy and the methodology used in this project. In addition to considering that which was selected, it also considers those which were not. First, the nature of the research and the implications this has on the research methods is considered. Second, the various research strategies are outlined in relation to this project, in order to explain why the aforementioned selection was chosen. Finally this section looks at

the research methods themselves, evaluating which are applicable to this research project and why.

4-3.1--The nature of the research.

In the previous section which dealt with the logic of enquiry, this chapter alluded to there being various factors which influence the choice of research strategy one uses. In addition to the ontological and epistemological perspectives of the researcher there is also the nature of the research: the question being asked and thus the type of data being used to answer it. In terms of the nature of the research, this section must first consider the difference between qualitative and quantitative research. David Marsh and Gerry Stoker consider the distinction between the two approaches to be connected with varying attitudes towards political science (2002).

Qualitative research is concerned with exploring social actors' experiences and their meaning, and is used for capturing context and processes (Devine, 2002). It is also considered to be more interpretive in nature than quantitative research and is 'concerned with producing discursive descriptions' (Blaikie, 2009: 232). In this type of research data is usually collected through such methods as: participant observation, in-depth interviewing, focus groups and documentary content analysis. Quantitative research is seen to be concerned with methods aimed at measuring aspects of social life in terms of quantity, in which data collected is either converted in to numbers or collected as such, and is then analysed numerically (Blaikie, 2009). Quantitative research is considered to be generally but not exclusively experimental in nature, and is concerned with 'the observation and measurement of repeated incidences of a political phenomenon' (John, 2002: 218). Typically quantitative research involves data collection methods such as self-administered questionnaires, structured interviews, structured observation, and experimental repetition.

As this research project is concerned with producing a discursive analysis exploring and interpreting the context behind an actor's process and meaning, why the EU views aviation security to be a pressing policy concern in the post-9/11 era, it has

been conducted as qualitative research rather than quantitative. As illustrated in section **4-2**, this research project is concerned with answering a 'why' question. The explanation of the deductive strategy in section **4-3.1** highlights its use in answering such questions. The description of the inductive strategy has shown it is more commonly associated with 'what' questions. However it is the opinion of this researcher that this is not a significant problem as induction was only used in parts of the research and then only to support the research which is primarily based on the deductive research strategy.

4-3.2--The research strategies.

Section **4-2.1** has introduced and explained the two research strategies which were used in this project namely the deductive and inductive strategies. These are not the only research strategies however, there are two others this project considered and albeit eventually dismissed: the retroductive strategy and the abductive strategy. This section now looks at these two rejected strategies. Whilst both of these are commonly associated with 'why' questions, there are more significant issues with each strategy which countermand this apparent use.

The retroductive strategy has its roots in the philosophy of scientific realism and is generally thought to be of most use in answering 'why' questions. It begins with an observed regularity, and a hypothetical model of the mechanism/structure responsible is constructed. Observation and experiment is then used to determine the existence of the structure or mechanism modelled. The retroductive strategy is considered to be more applicable to the natural sciences than the social sciences. As with regards to the social sciences

> the nature of explanatory mechanisms is usually well known, the task becomes one of discovering which of a number of mechanisms is responsible for producing a particular regularity … Hence, complex and sometimes time-consuming procedures are needed to unearth them (Blaikie, 2009: 111-2).

The abductive research strategy has its philosophical roots in interpretivism, and can be used to answer both 'what' and 'why' types of questions. It is used to describe and facilitate understanding of social life in terms of the motives and accounts of social actors. It is primarily concerned with translating lay descriptions

of social life into technical descriptions. The abductive research strategy is considered to be of limited use in social sciences research (Blaikie, 2009).

This project has chosen to use the deductive research strategy along with the inductive strategy for a number of reasons. First, the similarities between the ontological and epistemological underpinnings of the inductive and deductive strategies and the researchers own views as detailed in section **4-1**. Also a contributing factor was the deductive research strategy's aptness for answering 'why' types of research questions such as the one this thesis is concerned with. The final reason was the drawbacks to both the retroductive and abductive strategies as mentioned above.

4-3.3--The research methods not selected.

Data collection methods such as self-administered questionnaires, structured interviews, structured observation, and experimental repetition were initially ruled out as these are more associated with quantitative research, and as mentioned in section **4-3.1**, the research conducted in the undertaking of this project was of a qualitative nature. The main reason the chosen methods of data collection were selected for use in this project is the subject matter the thesis deals with. Due to the sensitive nature of aviation security and counter-terrorism and the simple fact that it is such an understudied area, the available data is rather limited and therefore seriously constrains the research methods that are applicable.

4-3.4--The chosen research methods.

The main research method the data collection for this project has used is documentary analysis. Documentary analysis is considered to be a vital resource for political research. '[A] careful use of a wide range of documentary material is one of the most reliable methods open to the political researcher and provides an opportunity for the production of authoritative studies' (Burnham et al, 2004: 188). Again due to the lack of scholarly attention been paid to the subject so far, in the main this project has not focused on using tertiary sources. Instead it has focused

on primary and secondary material concerning two main sources: the various governmental institutions of the EU and the industry, principally ICAO.

The documentary analysis has been corroborated through elite interviewing. The 'majority of work by political scientists is concerned with the study of decision-makers and hence a key research technique for political scientists is what is known as elite interviewing' (Burnham et al, 2004: 205). Triangulation is simply applying multiple methods of data collection and analysis in order to achieve as rounded and clear a picture as possible. In order to facilitate triangulation the interviews have been conducted with people from the same sources as the documentary material.

A common criticism of elite interviewing is the potential for a lower rate of return than other methods of data collection (Blaikie, 2009; Burnham et al, 2004; Devine, 2002). This is especially relevant for this project considering the sensitive nature of the subject matter. In an attempt to mitigate the possible limitations on the research that may have resulted from this, as many potential interviewees as could be identified were contacted. However, as was predicted, the issue of secrecy not only presented an issue for data collection in reference to access to documents but also in obtaining interviews. Only approximately a fifth of interview requests achieved a response, and the percentage of interviews actually granted is closer to fifteen. Even amongst those that were granted, the perception of how seriously the sensitive nature of the subject is taken by those involved was apparent from the various conditions imposed on the interviewer. These included: strictures on the anonymity of interviewees, confidentiality of organisational intellectual property, restrictions concerning acceptable usage of the data obtained and thorough examination of the interviewer against strict criteria prior to access being granted.

The prospective interviewees were identified through conducting a search of all the publicly available information, primarily online, concerning the personnel of the relevant organisations. The selection of interviewees was conducted according to a single criterion: knowledge of aviation security in the EU over the time period the thesis is concerned with. In terms of the governmental institutions of the EU, the

three primary areas for recruitment were determined to be the transport sections of the Commission, Council and EP. In order to ensure the maximisation of data collection, the aim was to supplement these with two additional streams of interviewees: those from the departments concerned with counter-terrorism within the three main institutions, and those involved in both transport and counter-terrorism within the national governments of the EU Member States. In order to ensure the data collected allowed for as strong and rounded analysis as possible, interviewees were also selected from among the various industry organisations involved in aviation security within the EU.

The fieldwork undertaken as part of the research for this PhD – specifically the interviews was made possible through the achieving of a University Association for Contemporary European Studies (UACES) Scholarship. The financial grant which accompanies the title of UACES Scholar, allowed for two research trips to be conducted. The first was to Brussels, Belgium for the month of June 2011 during which twenty interviews were conducted along with more general practical research into policy-making in the EU. The second research trip was of twelve days duration to Paris, France during July 2011 - of which the notable product was the four interviews and significant documentary analysis conducted.

As part of the fieldwork, a total of twenty-four interviews were conducted, seventeen of which were with those involved in policy-making and seven with those from the industry. The seventeen interviews conducted with policy-makers included personnel from the Commission, the Council, and the EP as well as institutions of national governments. The eight interviews conducted with personnel from the Commission included one counter-terrorism official from the Directorate-General Home Affairs (DG-HOME), two aviation security personnel from the Directorate General Enterprise & Innovation (DG-ENTR), and five officials from the Directorate General Mobility & Transport (DG-MOVE). Four interviews were conducted with officials from the Council including personnel whose primary focus covered both transport and counter-terrorism topics. One interview was conducted with a Member of the European Parliament (MEP), from the EP's transport committee. A

further four interviews were conducted with persons from national governments, including one which is neither a Member State of the EU nor an European Economic Area (EEA) country but is a European ICAO Contracting State.

Of the seven interviews conducted with practitioners involved in aviation security, two were conducted with officials from ECAC. A further two were conducted with representatives of other industry organisations, namely the Airports Council International European Office (ACI-Europe) and the European Cockpit Association (ECA). The remaining three interviews were conducted with persons from a range of private organisations and companies whom are involved in aviation security by way of their products or services. For reference in the thesis the interviews were coded alpha-numerically in chronological order of interview.

These interviews were conducted as semi-structured interviews, as these allow for greater specification. The interviews were begun with a set list of questions to be asked, which varied from interview to interview depending on the type of organisation the interviewee is from. The main reason for this difference were the varying levels of relevant experience, which was determined by factors such as: the level and nature of involvement in aviation security, of both the individual and the organisation - both in terms of aviation security in general and specifically in relation to the EU's efforts in aviation security. This decision to conduct semi-structured interviews with questions specifically tailored to the individual was in order to ensure that the necessary information was obtained. However as the interviews progressed it was determined that a balance must be achieved between what the interviewer thinks is important and allowing the interviewee to open up new areas.

This section has explained the various research methods which were not selected to be used in the research for this project and the reasons why this was so. It has examined the methods that were chosen; documentary analysis and elite interviewing, and explained that the major reasons for selecting these methods are their applicability to qualitative social science research in general and more

specifically the subject area this thesis is concerned with – aviation security and counter-terrorism. It has also detailed how triangulation was used to further strengthen the findings of this research.

4-4--The ethical & legal issues involved in this research project.

This section is concerned with the various ethical and legal issues involved in undertaking this research. It will explain what these issues were and how this project has counter-acted them in order to ensure no harm of any kind was caused to anyone as a direct result of this research.

4-4.1--The ethical issues.

This section is concerned with the issue of ethical research and the issues this project will face as part of the data collection. The research conducted as part of this project has adhered strictly to the ethical code of practice applied to postgraduate research by the Research Ethics Panel. Given the sensitive nature of the subject this thesis is concerned with, that of aviation security and counter-terrorism, there are two ethical issues concerning this research, both of which are concerned with the data it has used. The first relates to the documentary analysis aspect of the research. As is discussed in the following section, there are strict rules regarding access to the type of data this project is dealing with. As such, a major ethical consideration of the project must be the handling of the data used. The second ethical consideration this project is faced with relates to the elite interviewing aspect of data collection. It was essential that this project ensured that maintaining the anonymity and confidentiality of the Interviewees is paramount.

The research conducted as part of this project has done everything possible in order to be ethically sound. The data collection methods used are non-invasive, all participants did so voluntarily and free from coercion, under their own conditions and subject to their own stipulations. In addition, it must be stressed that nobody was physically harmed in the undertaking of this project. The data collected as part

of this research was of a sensitive nature and as such required appropriate handling and the interviewees were and must continue to be guaranteed full anonymity and confidentiality.

4-4.2--The legal issues.

This section is concerned with the legal issues that the research for this project may have faced. It will examine what these issues are, and then detail how these potential problems affected the research design. Given that the research is concerned with aviation security and counter-terrorism this project required information on what are considered to be 'sensitive' security issues. Therefore, the main legal issue the research for this project faced was in regard to access to information. As mentioned in sub-section **4-3**.**4**, documentary analysis constitutes a significant part of the research. The documents this project is concerned with come mainly from two sources: the various institutions of the EU government and ICAO.

The nature of the documents required does not, however, mean that no information is available. In the case of the EU governmental institutions, Article 255 of the Treaty establishing the European Community states:

> Any Citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and conditions to be defined in accordance with paragraphs 2 and 3 (European Union, 2002: 4).

Much of the general publications, official documents (including speeches, white papers, green papers, recommendations and resolutions) and legislation regarding EU aviation security has already been made public. As such these are readily accessible either online, at libraries or in EU documentation centres.

It is also possible to 'ask to see a document that has not been made public. This applies both to documents drawn up by the institution and documents it receives that come within its remit' (European Union, 2002: 14). The required forms and details of the process are available online. A response will be issued within fifteen days of the application being received and if the application is rejected, one can

appeal in writing providing the reasons for accessing the document and supporting information (none of which are required for the initial application) to have a decision reconsidered. This then becomes similar to a Freedom of Information request. In addition, the appeals process may be lengthy and provides no guarantees as it is stated that appeals may be denied for security reasons.

ICAO also produces a wide range of documents relating to aviation security. These include, but are not limited to: Standards and Recommended Practices (SaRPs), policies, manuals, circulars, reports, meeting minutes and reports, statements and aviation security training packages. Whilst some of this is available through the website, obtaining the majority of these makes it necessary to visit one of the ICAO depositary libraries, the primary site being at ICAO headquarters in Montreal, Canada. This would not be feasible - the cost, in terms of time as well as financially would make the obtaining of this prohibitive for a PhD research project.

In the case of certain documents it may be necessary to apply to the organisation for access. This is done by contacting the organisation and the civil aviation authority of one's country explaining: the document(s) one wishes to access, the reasons why this is required and the purposes they will be used for (ICAO, n.d.a). In the case of this PhD this was not, however, necessary, as the majority of documents covered by these procedures are privileged legal records that are not required for an evaluation of the EU's involvement in aviation security. The exception is in the case of 'Doc 8973 – Security Manual' where requests:

> should be submitted directly to ICAO's Document Sales Unit . . . *As distribution of certain volumes of Doc 8973 is restricted to authorized* [sic] *entities and individuals, sales are subject to approval by the designated authority for aviation security in each respective Member State of the Organization* [sic] [emphasis in original] (ICAO, n.d.b).

The UK Civil Aviation Authority has always maintained the approach that such documents would not be released to those who did not have a certified operational need to view them.

The legislative documents pertaining to EU aviation security were already in the public domain, however a number of Annexes were deemed classified. In addition,

any documents pertaining to the current situation are withheld for security reasons. This therefore meant that it would not be possible to get the necessary information to perform integrally sound analysis unless the thesis took a historical perspective rather than attempting to focus on the current situation. As such, it was necessary to design the PhD to ensure it is concerned with the EU's efforts over a specific time period - one which does not correlate to the most recent version of Doc 8973, and the most current EU legislation on aviation security.

This section has considered the various ethical and legal issues involved in undertaking this research. It has explained what these issues are and how this project has countered them. It has acknowledged the ethical requirements of a PhD research project and therefore the steps necessary to ensure no harm of any kind is caused to anyone as a direct result of this research. It has also detailed how the main legal issue this project faced is access to information given the sensitive nature of the subject of this thesis. This not only had a significant impact on the research design, but moreover was the biggest constraint on the PhD. In order to pre-empt potential criticism, this section has considered the relevant application for access processes for the various institutions this thesis is concerned with, in order to justify the chosen research design.

4-5--The operationalisation.

This section is concerned with the operationalisation of the research for this project. It bridges the gap between the theoretical and practical realms. It shows how the theory mentioned throughout this chapter relates to what has happened during the course of this research. It considers what the project is looking at in practice and how this was identified. Consideration will also be given to: the testing of the findings of this project and the indicators to be used.

In terms of relating the theory to the practical this section is concerned with what the research strategies were used for during the course of the project. The inductive

strategy was used during the literature review, and to build the theory which has provided the framework for this project, from the data collected it has produced a generalisation which can be used to explain a particular observation. In terms of this project, this is that 9/11 caused the EU to become involved in aviation security which resulted in harmonised higher standards and more effective implementation. The deductive strategy was then used, a hypothesis was deduced from the theory constructed using the inductive strategy, which was then tested by collecting and analysing data. In relation to this thesis, the hypothesis to be tested using the deductive strategy is that of the possible reason for the aforementioned relationship. In order to conclude the thesis it was necessary to present the findings of its research. This required drawing conclusions of a theoretical nature based on the data collected. As such, inductive logic has been used as part of the data analysis to produce generalisations related to any important data that does not fit with the theory previously mentioned. It is also necessary to note that this analysis and its findings can never be completely sterile. The researcher's theoretical views (the ontological and epistemological perspective detailed in section **4-2.2**) will have ultimately to some degree impacted on the practical undertaking of the research and therefore its results.

This research project has identified exactly what it was looking at in-depth: the political impetus which caused the EU to become involved in aviation security, and the effects this has had. This was determined by the initial wide (but relatively shallow) empirical investigation conducted when undertaking both the literature review and the research necessary to construct the theoretical framework. With regards to the testing of this project's hypothesis and findings, this has been done by simply applying triangulation (as described in section **4-3.4**) to the available data collected through documentary analysis and conducting interviews. The purpose of this is to show the validity of the hypothesis: **9/11 caused the EU to become involved in aviation security which resulted in harmonised higher standards and more effective implementation**. The three specific empirical chapters this thesis contains are concerned with: the EU becoming involved in aviation security, the EU's initial efforts which were aimed at achieving common standards in aviation

security, and the improvement and development of the EU's efforts on aviation security through the focus on ensuring coherent implementation of legislation on aviation security.

This section has detailed the operationalisation of this project by explaining how the theory involved in this project relates to the practical research. It has shown how the chosen research strategies, the deductive and inductive, have been implemented in practice to provide direction for the literature review, construct the theoretical framework from which the hypothesis was deduced and to collect the data and subsequently analyse it. It has also shown the logic and philosophies associated with the both the inductive and deductive strategies, and therefore that the researcher's own views influence how the world and the data collected from it is seen and the effect of this on this research. It has explained that this research project has identified its in-depth focus (the reason for and effects of EU involvement in aviation security) from the initial empirical evaluation. It has then detailed how the hypothesis was tested by applying the data collected using triangulation.

4-6--Conclusion.

This chapter has been concerned with the research conducted as part of this PhD in an attempt to answer the following question: **To what extent has EU involvement in aviation security occurred as a result of 9/11, and what effects has this had?** It has identified and explained the research strategies to be used: the deductive research strategy and the inductive research strategy, and described the main aspects of deductive and inductive logic in order to explain the effect these have had. It has also stated both the ontological and epistemological underpinnings of both deduction and induction, as well as summarising the researchers own ontological and epistemological views. This was in order to show the similarities in point of view which was one of the main reasons why these two research strategies were chosen. In addition to these views, is the fact that the deductive strategy lends

itself so well to answering a ‘why’ question. Whilst the analysis of the inductive strategy has shown it is more commonly associated with ‘what’ questions, it is the opinion of this researcher that this is not a significant problem, as induction has only been used in parts of the research and then only to support the research which is primarily based on the deductive research strategy.

This chapter has explained the various research methods which were not selected to be used in the research for this thesis and the reasons why this was so. It has examined the methods that were chosen: documentary analysis and elite interviewing, and explained the major reasons for selecting these methods. These are: their applicability to qualitative social science research in general and more specifically the subject area this project is concerned with, aviation security. It has also detailed how triangulation has been used to further strengthen the findings of this research.

This chapter has also considered the various ethical and legal issues involved in undertaking this research. It has acknowledged the ethical requirements of a PhD especially regarding the anonymity and confidentiality of interviewees, and therefore the steps necessary to ensure no harm of any kind is caused to anyone as a direct result of this research. It has also detailed how the main legal issue facing this project was access to information given the sensitive nature of the subject of this project. In order to pre-empt potential criticism, this section has shown that this is not the issue one would think by considering in detail the various procedures for obtaining information.

This chapter has finished by detailed the operationalisation of this project, as such illustrating how the theory involved in this thesis relates to the practical research. It has shown how the chosen research strategies: the deductive and inductive have been implemented in practice – to provide direction for the literature review, construct the theoretical framework from which the hypothesis was deduced and to collect the data and subsequently analyse it. It has also shown that the logic and philosophies associated with the both inductive and deductive strategies, and

therefore the researcher's own views have influenced how both the world and the data collected from it are seen. Furthermore, how this has had an effect on this research. It has explained that this research project has identified its in-depth focus (the prominence afforded to aviation security in counter-terrorism policy by the EU) from the initial empirical evaluation. It has then detailed how the hypothesis was tested by applying the data collected using triangulation. The next chapter of this thesis details the findings of the initial empirical investigation in to aviation security, which led to the formulation of the hypothesis.

5--Aviation Security: a conceptual analysis.

5-1--Introduction.

This chapter is concerned with what aviation security is. It attempts to provide a brief yet comprehensive definition before looking at aviation security in more detail. The field of aviation security did not begin within EU involvement. As such, the chapter also gives more detailed consideration to how and by whom the international aviation security industry was regulated prior to 9/11. It is necessary to explain both the structure and nature of the regulation which existed prior to EU involvement, in order to explain how the pre-existing norms and institutions have shaped policy dynamics. This establishes the base point from which this research project has conducted its investigation and a reference point for the subsequent analysis, allowing the thesis to provide a fuller explanation of what effect EU involvement has had.

5-2--A definition of aviation security.

Aviation security is a varied and thus complicated concept. This makes accurate and coherent yet brief, definitions unfavourable. A simple but viable explanation of what aviation security consists of is: the measures taken to safeguard aviation by protecting it from threats, mainly terrorism. ICAO considers aviation security to be concerned with preventing

> acts of violence directed against international civil air transport and airports and other facilities used by such air transport [which] jeopardize the safety thereof, seriously affect the operation of international air services and undermine the confidence of the peoples of the world in the safety of international civil air transport (ICAO, 2007: 199).

These acts of violence 'may be directed against aircraft, aircraft crews and passengers engaged in international air transport' or 'against civil aviation personnel, civil airports and other facilities used by international civil air transport' (ICAO, 2007: 199). This is usually referred to as the safeguarding of international civil aviation against acts of unlawful interference. To summarise, 'the focus of

[aviation] security is to prevent voluntary harmful acts and acts of unlawful interference' (ICAO, n.d.a) where unlawful interference can be explained as 'acts of sabotage, unlawful seizure of aircraft and the use of civil aircraft in terrorist attacks' (IATA, 2010).

5-3--Aviation security, a summary of the concept.

Aviation security is incredibly more intricate than it is generally believed to be. The vast range of threats it is subject to and the measures required to protect against them, coupled with the fact that it differs across the various branches, complicate the issue of a straightforward and brief definition. Expressed simply aviation security is: the set of measures necessary to protect aviation from terrorism and other threats by safeguarding against acts of unlawful interference or other harmful attacks which may be directed against aircraft, airports, property, personnel or passengers.

It is the general consensus of the aviation industry that unlawful interference consists of actions intended to cause maximum damage which can cause harm and even kill. In a study published at the end of the twentieth century it was further suggested these include such actions as: attacks on airports and other aviation related property through either armed assault or the use of explosives; the sabotage of aircraft with explosives either on the ground or in-flight, the hijacking of aircraft and missile attacks on aircraft (Abeyratne, 1998). This description, whilst entirely valid at the time of publication, is, however, in a post-9/11 world, incomplete. Given the dramatic terrorist innovation of using passenger aircraft as guided missiles to be flown into pre-determined land based targets that emerged with the attacks of 9/11, a list of what constitutes unlawful interference must now also include suicide hijacking. Aviation security is, and always has been, concerned with protecting aviation from acts of unlawful interference. These are most often instances of terrorism directed against aviation, for example Dawson's Field, Lockerbie, 9/11 and the liquids plot. Thus, history shows that the evolution of

aviation security is a direct consequence of the development of the biggest threat it attempts to counter: that of terrorism.

Aviation throughout its history has been a target of terrorism. This has included piracy, evolving from the peaceful skyjacking of single aircraft for political demonstrations or criminal purposes, to those causing fatalities and multiple hijacks. The most recent successful terrorist attack against aviation has gone one stage further - the multiple hijacking of aircraft to be used as guided missiles, purposefully crashed into ground-based targets, in order to ensure the resulting explosion causes maximum damage. Another manifestation of terrorism against aviation over the years has been armed assault. This has been directed against aircraft, airports and airline offices, and has progressed from the use of firearms and grenades to car bombs and missile attacks. The most significant threat to aviation is sabotage: attempting to destroy an aircraft in-flight through the use of explosives. Over the decades these attempts have become more sophisticated as technology has improved, from luggage sized devices which required manual operation in-situ, to barometrically triggered devices and those which can be remotely detonated, through to the early use of plastic explosives designed to escape detection, and to most recently pocket sized devices designed to resemble innocuous items such as fizzy drinks and cosmetics. Whilst the measures aviation security consists of differ according to the particular branch concerned, there is one aspect common to all. This is that any security programme must be a multi-layered system consisting of numerous components, the most important of which is strong, shared intelligence. Airport security is primarily concerned with the screening of passengers, and both checked and carry-on luggage as well as access control. Due to the sheer volume of people employed by an airport, staff also constitutes a fundamental security concern.

There is no single body which controls international aviation, however there are some more prominent and important than others, most notably ICAO and IATA, and also in terms of the EU: ECAC. The number of different bodies involved in security within the aviation industry, all with differing perspectives, increases the difficulty

somewhat of ensuring an effective worldwide security system. Recommendations and standards are only as effective as their implementation. The international organisations involved in aviation security can only set standards, they do not have the power to dictate through what processes and procedures these are to be implemented, this is the responsibility of national governments.

5-4--Control and regulation of aviation security internationally.

In order to further aid the explanation of aviation security as a concept this section details the organisations involved in international aviation security: who they are, their responsibilities, security activities and capabilities. There is no single body responsible for aviation security, international aviation is regulated by a number of organisations. The two most prominent are ICAO and IATA. Whilst the organisations are all concerned to a degree with aviation security, they encompass considerably different viewpoints, areas of responsibility and levels of authority. As this research project is concerned with EU aviation security, another prominent body - one which was involved in aviation security in Europe before 9/11: ECAC, must also be considered. This section also provides a diagrammatic depiction and accompanying explanation of the system as a whole.

Since the inception of aviation security in the 1970s there has been an established two-tier regulatory structure. The top tier consisted of the various international organisations, primarily ICAO, and the bottom tier consisted of the individual national governments. This is due to how the regulatory structure of aviation has evolved since it began after the Second World War. International aviation was considered highly important by the major air powers during the Second World War and the need for international cooperation in civil aviation was recognised by all involved in it. This led to ICAO's beginnings as a group of Second World War allies who saw an international body as being beneficial to the development of international air transport and its safety (Mackenzie, 2010). Prior to 9/11, none of the organisations involved in aviation security had supranational powers, as such all

of the organisations considered in this chapter operate an inter-governmental approach.

5-4.1--ICAO.

On 11 September 1944, invitations were issued to fifty-five sovereign states for the International Aviation Conference to be held in Chicago, during November and December of that year. The fifty-three who attended the Convention, Saudi Arabia refused the invitation and the Union of the Soviet States of Russia (USSR) pulled out at the last minute, spent the two months negotiating various matters of aviation. With the passing of the Convention on Civil Aviation otherwise known as the Chicago Convention on 7 December 1944, ICAO was officially created. ICAO's initial remit centred on the issues discussed at Chicago. These can generally be split into the following categories: world route arrangements – including transit rights and landing agreements, the creation of the organisation – its Council and the principles an international aeronautical body would follow, and a multilateral aviation convention – concerned with air navigation, air transport, and technical aviation matters – or safety (MacKenzie, 2010). Security, however was not one of the issues discussed at the time of the Chicago Conference.

ICAO, which is nowadays a specialised agency of the UN, was established with the mandate 'to ensure the safe, efficient and orderly evolution of international civil aviation' (ICAO, n.d.d.). ICAO attends to all matters of aviation, not just security. ICAO's sovereign body is the Assembly which consists of all Contracting States. Its governing body is the Council which consists of thirty-six Contracting States elected by the assembly, although certain Contracting States have permanent membership such as the US and some organisations which are not Contracting States have observer status. ICAO's day-to-day operations are due to the working groups of the Secretariat. In terms of aviation security this is the Aviation Security and Facilitation Policy Section of the Air Transport Bureau (ATB), and the Security Section of the Office of the Secretary General. Other committees worthy of note are the Committee on Unlawful Interference and the Air Transport Committee. The most important security section is the Aviation Security Panel (AVSEC Panel) which is a

specialist body elected by the Council consisting of experts drawn from Contracting States and organisations such as IATA. The structure of the various security components of ICAO is illustrated below. The AVSEC Panel is specifically charged with reviewing the current security standards and rewriting Annex 17.

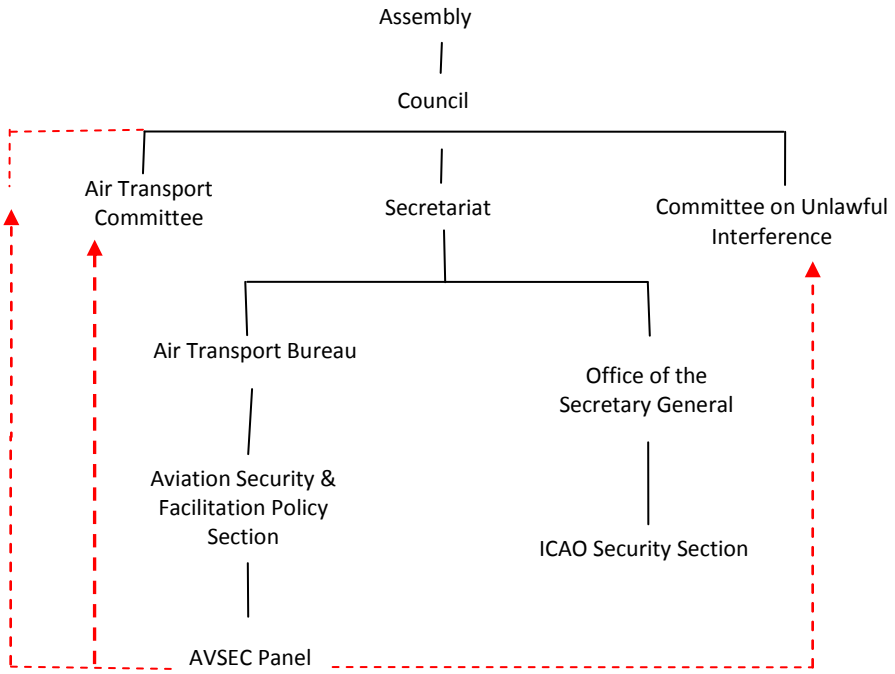


Figure 4 - ICAO's Structure Relating to Security.

Within ICAO, the various committees and groups work together to produce SaRPs. These are rules that a national security programme should be based upon if it is to be valid. The SaRPs are

> a compromise document designed to balance the needs of civil aviation seen through the eyes of security specialists with political and economic considerations demanded by the wide-ranging membership of ICAO (Wallis, 1999: 85).

The red dashed lines above highlight one of ICAO's strengths relating to security. Whilst the AVSEC Panel comes under the ATB, it has the same standing as the two related higher level Committees. The Council recognise the expertise of the panel and listen to it on matters of security, rather than attempting to dominate it.

Whilst ICAO is still considered to be the leading authority on aviation matters including security, it does however suffer from a number of limitations. One is the wide-ranging membership. The list of Contracting States includes the most affluent industrial powers as well as the least developed of the Global South nations. Not all

states are in a position to afford new security developments. The level at which standards are set has to be the lowest common denominator (LCD), and therefore must consider the economic and management weaknesses of the poorest and least developed of Contracting States. Another limitation of ICAO is that of bureaucracy, as a political organisation the majority of its output is the result of debates and therefore compromises. An additional limitation involves the implementation of SaRPs.

> The weakness in ICAO's approach to improving the [security] of civil aviation has been the inability to become involved in the implementation of the agreed upon procedures. The formal situation is that each contracting state is sovereign and thus cannot be directed by any central international body (Wallis, 1999: 100-1).

This weakness however is not inherent to ICAO alone, rather it is a limitation of most international organisations.

5-4.2--IATA.

Another extremely prominent international organisation involved in aviation is IATA, the trade association of the worlds scheduled airlines. IATA was established with specific goals;

> to promote safe, regular and economical air transport for the benefit of the peoples of the world, to foster air commerce and to study the problems connected therewith. To provide means for collaboration among the air transport enterprises engaged directly or indirectly in the international air transport service [and] to co-operate with the International Civil Aviation Organization [sic] and other international organizations (Wallis, 1999: 162).

Like ICAO, IATA is not solely concerned with security it deals with all aspects of aviation relevant to airlines. The full membership attends an annual general meeting, whilst day-to-day operations are overseen by the Executive Committee under the leadership of a Director-General. Unlike ICAO however, IATA's structure relating to aviation security is relatively straightforward. The main security component of the organisation is the Security Advisory Committee (SAC). The SAC consists of security experts who are invariably the heads of security departments of international member airlines. The SAC has two main functions; maintaining the IATA minimum security standards for implementation at international airports as well as the IATA equivalent of the ICAO security manual, and the Intensified Aviation Security Programme:

> an advisory service provided by the association to civil aviation and airport authorities designed to ensure security standards are implemented and maintained at acceptable, cost-controlled levels (Wallis, 1993: 106-7).

IATA also plays a strong role in developing new security standards alongside ICAO.

One of IATA's greatest strengths is the security training they provide. This ranges from academic style self-study with modules on security operations for different levels of responsibility to residential courses with lectures and workshops from industry experts. One strength IATA has over such organisations is the mandate 'to intervene during on-going acts of unlawful interference and in post-incident investigations' (Wallis, 1999: 88). IATA's greatest weakness is the same as ICAO's. All new standards or recommendations are in effect no more than suggestions. It has no ability to ensure measures are implemented or dictate how this should be done. As with ICAO, IATA also suffers from the problems associated with wide-ranging membership and bureaucracy, as explained above.

5-4.3--ECAC.

In the case of European aviation, the other leading organisation concerned with security is ECAC. ECAC has been described as a government organisation. ECAC was founded in 1955 at the direction of Member States for Member States (INT21, 2011). It is, however, officially neither an inter-governmental organisation nor a non-governmental organisation in the true sense of the political science understanding of these labels. For the purposes of this project, the thesis classes it as a regional network. It was initiated as a forum for European national Directors of Civil Aviation to build on ICAO's work by exchanging information and best practices. The idea was that ECAC would work autonomously with its Member States, whilst coming under the arm of ICAO. ECAC works in close conjunction with the European and North Atlantic (EUR/NAT) Regional Office of ICAO. Indeed, many mistake them to be one and the same, likely resulting from the two having the same headquarters. In practice however ECAC is its own entity with separate staff, budget and most importantly accountability.

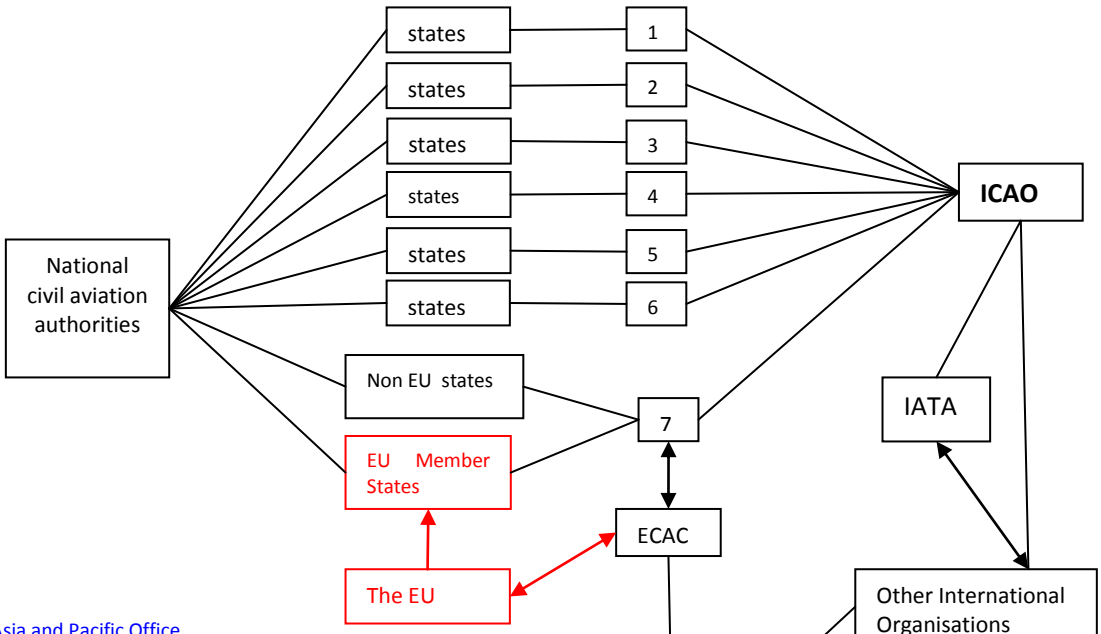
ECAC also suffers from many of ICAO's weakness. Nominally that it is built on ethos and philosophy, not force. ECAC achieves its aims through Memorandums of Cooperation and bilateral agreements between ECAC and the individual state. ECAC has no state powers, it cannot enforce its recommendations. Implementation by Member States is voluntary and depends on the individual Member States. However, one advantage ECAC has is that its members are generally industrial powers 'with a level of affluence superior to that achieved by the average ICAO Contracting State' (Wallis, 1999: 84). This allows ECAC to call for higher minimum standards than ICAO would be able to.

The forty-four of the one hundred and ninety-two ICAO Contracting States which make up ECAC includes all twenty seven Member States of the EU. Four of those members are G7 nations and also permanent members of the ICAO Council – the UK, France, Germany & Italy. All forty-four Director-Generals of Civil Aviation meet three times per year, to 'review, discuss and resolve policy issues' (ECAC, n.d.a). It holds an annual forum which gives the Director-Generals 'an opportunity for informal strategic discussions on issues of topical importance' (ECAC, n.d.a). There is also a Co-ordinating Committee responsible for day-to-day operations. This committee consists of the President of ECAC, three Vice-Presidents and up to seven 'focal points'. These focal points are Director-Generals who take responsibility for leading specific areas of ECAC activity. The security task force is primarily concerned with reviewing and producing ECAC Document 30 (Doc 30), Part II – ECAC's aviation security manual.

One difference of ECAC to those such as ICAO and IATA is that ECAC's 'work in civil aviation matters has enabled Director-Generals of Civil Aviation to adopt detailed recommendations in the technical and operational areas and guidelines for the implementation of these recommendations' (ECAC, n.d.b.). Another difference from ICAO and IATA is the close working relationship with government fostered by ECAC. 'ECAC and the EU have reached a modus operandi for close co-operation with the aim of ensuring a single comprehensive aviation security policy for the Wider Europe' (ECAC, n.d.c.).

5-4.4--The industry as a whole in terms of EU Member States.

Figure ***5*** shows an extremely simplistic depiction of the international aviation security system as the thesis explores this issue in considerably greater detail later on. In order to maintain diagrammatic simplicity, this has been drawn on the following assumptions of understanding. First, the hierarchy of the institutions depicted has ICAO as the premier organisation down the chain to the national civil aviation authorities. The directionality of authority should therefore be read as right to left and top to bottom unless otherwise indicated. Second, that that it is not just ICAO that interacts with all the nation states, IATA and the other international organisations do so as well. Third, in respect to the industry bodies, it is not just the EUR/NAT Office that works with regional organisations, the other six offices each have their own similar system. Fourth, as with the second assumption the other European industry organisations also work with the nation states grouped under the EUR/NAT Office.



1=Asia and Pacific Office
2=Middle East Office
3=Western and Central African Office
4=South American Office
5=North American, Central American and Caribbean Office
6=Eastern and Southern African Office
7=European and North Atlantic Office

More information on which states these consist of can be found at: http://www.icao.int/icao/en/m_rao.html

Figure 5 – International Aviation Security

The diagram above shows the established structure of aviation security - the relationship between the international organisations and nation states including the

intermediary step of ICAO's regional offices. The section showing ECAC and the other European industry bodies shows the place of the regional branches of international organisations other than ICAO. As this chapter has previously mentioned there is no official tertiary level in the relationship and therefore there is no defined place for inter-governmental or supranational institutions. As such the placement of the EU is subject to interpretation, and a matter this thesis considers further in later chapters.

There are of course a number of other aviation organisations other than ICAO and IATA. These however generally do not consider either aviation security to be a primary activity, or themselves to play a leading role. Whilst this, obviously, does not negate their efforts, it does purely for the purposes of this chapter render them unworthy of detailed examination. Their place and the role they play, with respect to EU aviation security, is instead explored later in this thesis.

5-5--Common standards in aviation security & their importance internationally.

This section is concerned with common standards in aviation security. First, it examines the subject matter by identifying what is meant by common standards in aviation security and explaining what they are. Next, the section examines the origins of common standards in aviation security focusing on when and by whom common standards were developed. The section then concludes by assessing how important common standards in aviation security are, and why they are this important.

5-5.1--Common standards in aviation security.

The EU's approach of making the establishment of a common standard its first act upon developing the new competence of aviation security was incredibly sensible. It cannot however be called original. Instead the approach is better described as following in the footsteps of those who have gone before. Those responsible for aviation security prior to the EU becoming involved have always focused their

regulatory approach on common standards. This therefore set a precedent the EU would have been amiss not to follow.

Common standards are therefore not just a fundamental concept in aviation security but rather the central tenet. It is through common standards that the industry is protected against acts of unlawful interference. There are two aspects to common standards. The first is that 'standards' can be taken to mean a set of rules regarding the measures deemed necessary to ensure adequate aviation security. The second aspect, which is the most important, is the 'common' part of common standards. Expressed simply, this means they are wholly and equally applicable to all who come under the purview of the entity who sets the rules.

5-5.2--The origins of common standards.

Since the inception of aviation security in the 1970s there has been an established two-tier regulatory structure. The top tier consisted of the various international organisations –primarily the ICAO – and the bottom tier consisted of the individual national governments. Since its creation ICAO's philosophy has been that of achieving through negotiation and consensus building, whilst respecting its founding principle: the recognition of state sovereignty. This can be evidenced from the text of the Chicago Convention. Chapter VI is concerned with international SaRPs and states: '[e]ach contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, [and] procedures' (ICAO, 1944: Article 37). This policy of creating a uniform set of rules that all Contracting States agree to adhere to, common basic standards, is how ICAO's philosophy has been actualised. Security was not one of the issues discussed at the time of the Chicago Conference.

With the rise of terrorism directed against aviation in the 1960s however a number of conventions –Tokyo (1963), Hague (1970) and Montreal (1971) were passed, and the 1970s saw the amending of the Chicago Convention to include Annex 17 – Security (MacKenzie, 2010). Annex 17 confirms to ICAO's policy of creating an international level of uniformity through international standards and procedures.

5-5.3--The importance of common standards in international aviation.

This sub-section is concerned with answering two specific questions. How important are common standards in aviation security? Why are they this important? The answer to both questions has ultimately been derived from examining the issue at an international level, which is necessitated by the history of aviation security. Aviation has, since it began being legislated – and even prior to that – been an international industry. As previously mentioned, the main regulatory body of the international industry is ICAO. Given the cross-border nature of aviation, what happens in one country can have both indirect and direct effects on other countries. If security is lacking in one country, it puts the security of other countries' aviation systems at risk. This was ably demonstrated by numerous incidences of skyjacking and sabotage during the 1970s and 1980s. Thus ever since its inception, aviation security has been a common interest. The majority of ICAO's work on aviation security has as such been concerned with SaRPs. ICAO relies on Contracting States adhering to SaRPs as it had no legislative power. In addition, the list of Contracting States spans the entire global scale in terms of both wealth and technological capability. It is therefore required to balance setting SaRPs at the LCD to ensure all of the Contracting States are capable of adhering and yet ensure this minimum provides an adequate level to achieve the designated aim. Many countries choose to implement their own programmes over and above ICAO's SaRPs in order to ensure their own national aviation programmes are as strong as possible, especially in the area of security.

It has therefore long since been the view of ICAO and the other international organisations that in order to ensure an adequate level of security in any given country, all countries must adhere to a certain standard. Without common basic standards there is no security. Even with the most stringent national aviation security programme, there is a significant risk if other states do not enact even the most basic requirements to ensure the security of aviation originating within their borders. This sub-section has attempted to explain from an international perspective why common basic standards are so important. This combined with the other two parts of this section: identifying what common standards are and their

origins, was in order to provide a rounded overview of the central tenet which underpins the specific subject matter of this thesis.

5-6--Conclusion.

Prior to 9/11, aviation security was regulated and controlled according to a two-tier structure. SaRPs were created by the international organisations and implemented by the national governments. Inter-governmental Organisations (IGO) are a voluntary forum and as such have no enforcement power over their Member States. Governments have the ability to mandate the actions of airports, air carriers registered and entities operating within their territories through legislation. Such a system only becomes deficient when national governments fail to ensure the industry fulfils its obligation to implement. It is the considered view of this author that this system should continue to be so. Aviation security should be decided at an international level by those directly involved in it. The role of governments in aviation security should be to assist the industry. This does not however mean there should not or cannot successfully be the inclusion of a tertiary level. Such a level would consist of regional IGO's such as the EU. The role of such organisations would essentially be the same as that of national governments: to provide support to the industry ensuring implementation through legislation. The role of the tertiary level would also include overseeing and coordinating national policies as well as aiding communication and cooperation between their Member States.

Until such time as there exists a supreme organisation that can eradicate sovereignty, it is highly unlikely there will ever be true uniformity of aviation security standards. States will always have differing histories, political outlooks and threat levels and therefore those who are capable are likely to exercise their right to go over and above the required minimum. The EU has the potential to be a strong actor in aviation security. The standards and recommendations, due to the discrepancies between the Member States, of the international organisations are set at the level of the LCD. Due to the increased economic and technical will of its

Member States, the common basic standards amongst the EU can be higher than the international agreements. Through bilateral agreements the EU can ensure the equivalence of the level of security provided by the standards of third countries – thus increasing the level of aviation security outside EU borders.

6--Developing the new competence.

6-1--Introduction.

With this chapter the thesis turns its attention away from looking at the theoretical, methodological and contextual aspects of the project. It now moves into the empirical study of the role of the EU in aviation security. The chapter is concerned with the development of a new competence: EU involvement in aviation security. This chapter starts by providing an introduction to the topic. This outlines the pertinent details of this chapter: what it contained, the specific research questions it attempted to answer, and how the theory it used to answer these was applied. This provides the foundations for the chapter. The chapter then goes on to focusing in more detail on the specific subject matter, the EU's involvement in aviation security as a new political competence. The chapter then moves on to begin the analysis. First, it examines the history of the origins of EU involvement in aviation security. Second, consideration is given to the reasons for this involvement, including the timing of it. This is followed by an assessment of who or what was responsible for this involvement. The chapter then continues by analysing how the new competence functions with regards to those involved and the roles of these key players. This involves it first considering which governmental institutions are involved in managing the EU's efforts in aviation security. Second, how these various actors work together in aviation security is analysed.

As Chapter **5** demonstrated, aviation security if it is to be successful requires that national governments, inter-governmental organisations and other organisations from the aviation industry all work together. As such, the thesis then turns its attention to examining the relationship between the EU and industry. This is done from the perspectives of the EU and of the aviation security industry. The chapter then moves into analysing the results of the EU developing the new competence. In order to do this, the chapter starts by considering what the EU's intentions were with respect to becoming involved in aviation security. It is shown that the EU's initial intentions and therefore its efforts were centred on common standards. To

strengthen the roundedness of the analysis the reasons for this are examined from a variety of perspectives. As the final area of examination, the chapter finishes by analysing what political area the EU considers aviation security to fit within. This identifies where within the wider scope of its political reach, the EU considers the new competence to be located.

In the literature review, the second chapter of this thesis, it was established that the subject concerning this thesis - that of EU aviation security in the post-9/11 era, is a field which is considerably lacking in scholarly attention. The third chapter provided a theoretical framework for the thesis. The fourth chapter detailed the methodology of the project. This is done through three empirical chapters, each concerned with a different specific element of the EU's legislation on aviation security since 2001. This chapter is concerned with the first of those: the development of the new competence – EU involvement in aviation security. This general area can be broken down in to four specific sub-topics. The first specific topic area is concerned with the origins of the EU's development of aviation security as a new political competence. This looks at the history of, reasons for, and who was responsible for, the EU's involvement in aviation security. The second specific topic area is concerned with the management of the new competence. This looks at how the EU's involvement in aviation security functions in terms of those involved, and the relations between governments and industry. The third specific topic area is concerned with the intended scope of the EU's involvement in aviation security over the last decade. This considers what the EU's initial involvement in aviation security consisted of and its efforts in this area over the first decade of involvement. The final specific topic area is concerned with the jurisdictional classification of the new competence. This examines where within the EU's political remit aviation security is located and why this is so.

The research question this thesis as a whole is attempting to answer is: **To what extent has EU involvement in aviation security occurred as a result of 9/11 and what effects has this had?** This chapter is attempting to answer the following specific questions:

1. When did the EU first consider aviation security as a political issue?
2. Why did the EU become involved in aviation security?
3. Who was responsible for EU involvement in aviation security?
4. How does EU involvement in aviation security function?
5. What did the EU set out to achieve by becoming involved in aviation security?
6. Where does aviation security fit within EU politics?

These six questions pertain to the four specific topic areas which form the basis of this chapter.

The theoretical framework - Chapter **3** – provided an explanation of what integration theory - specifically neofunctionalism and the concept of spill-over is: how integration in one policy area leads to political integration in related policy areas. Chapter **3** also explained the theory of SPE. An actor who has both the ability and authority to invest the full extent of their resources to promote a position in a supranational setting. This is done by seizing the right moment to do so by exploiting opportunities to push for attention to their problem or solution. Another concept prevalent in political science was also detailed in Chapter **3** – that of agenda setting theory and focusing events. Significant events (more often than not unexpected or unintentional) for example a crisis or disaster, direct attention to a particular issue. This is directly related to a concept within SPE – that of policy windows. There is a certain optimal time frame in which to push for policy change. It was stated in Chapter **3** that spill-over, SPE and focusing events will all be used in the analysis of EU involvement in aviation security.

The first specific topic area was concerned with answering questions one, two and three. In order to answer question one, the chapter utilised the theory of focusing events as an analytical tool. In answering question two, the thesis used a combination of the theory of focusing events and the concept of policy windows from the theory of SPE as the base of the analysis. SPE was also the analytical tool used to provide the answer to the third question. The second specific topic area this chapter examined was concerned with the EU's managing of the new competence.

It endeavoured, therefore, to answer the fourth specific research question. This was done by using a combination of both spill-over and SPE as a base for the analysis. Examination of the initially intended scope of the EU's involvement in aviation security was the third specific topic area this chapter is concerned with. This required that the fifth specific research question be answered. In order to do this, the thesis again used a combination of both spill-over and SPE as the framework for the analysis. The final specific topic area that made up this chapter is that of the political classification of the new competence. In order to evaluate where aviation security is located within EU politics, and thus answer the sixth and final specific research question, the analysis used spill-over as its theoretical base.

6-2--The origins of the EU's involvement in aviation security.

In this section the chapter begins by focusing on the EU's involvement in aviation security. It first analyses the history of the EU's involvement in aviation security. The chapter then provides the reasons for the EU's initial involvement in aviation security. This section then concludes by considering who was responsible for the EU becoming involved in aviation security.

6-2.1--<u>The history of EU involvement.</u>

In order to examine the EU becoming involved in aviation security, one must first identify what the EU considers aviation security to be. This was done by analysing the EU's initial policy on this subject. In Regulation (EC) No 2320/2002[6] the following definition is given: '"aviation security" shall mean the combination of measures and human and natural resources intended to safeguard civil aviation against acts of unlawful interference' (OJ L 355, 30.12.2002: 2). Prior to 9/11, the EU had no active involvement in aviation security, as it was considered by all to be a national competence. The EU merely followed European aviation security as a result of it holding observer status at ECAC (INT16, 2011; INT1, 2011). The full extent of

[6] Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of aviation security.

the EU's activities in aviation security was half the workload of one Commission employee (Assistant to Administrator level). This consisted of attending meetings and producing reports on these meetings (INT2, 2011; INT3, 2011). As such, EU involvement in aviation security prior to 9/11 was limited to an awareness of both the issue itself and what the Member States were doing regarding it. Aviation security as a political competence was only developed in 2001 after the 9/11 attacks.

The development of the new competence began with the convening of an emergency session of the Council. This emergency session was convened as a direct result of 9/11, thus EU involvement in aviation security occurred in response to a focusing event. Unfortunately, a number of key players were stranded in the US due to the unprecedented shut-down of US airspace on 11 September 2001, until the United States Air Force arranged to fly them back to Europe. Most notable of these were the Minister for Transport for Belgium, who then were the incumbent Presidency of the Union, and thus the President of the Council, Isabelle Durant, and the Commission's Director of Aviation, Michel Ayral, As such, the Council did not meet until 14 September 2001 (INT1, 2011; INT2, 2011; INT3, 2011; INT7, 2011). At this point, it was recognised by all involved that, with regards to aviation security, the situation could no longer remain as it had previously been. In the wake of 9/11, the EU realised not only was there an open policy window in the form of aviation security, but one that, due to the public reaction of the focusing event which caused it, could be exploited. 9/11 not only highlighted the need for change but also provided the impetus for the necessary changes to occur.

6-2.2--Reasons for EU involvement.

The aviation security policy of the US, and many other Chicago signatory governments, has been subject to much criticism over the years. Whilst aviation security by its very nature must be to a degree reactive, a prominent criticism is that national aviation policy is *simply* reactive. That it focuses only on attempting to ensure protection against repeats of previous attacks. Furthermore, it is argued that: 'Like all policy inspired by focusing events … the window of opportunity … for

policy change in aviation disasters is rather short after a large, attention-grabbing event' (Birkland, 2004: 342). Birkland goes on to state that the reasons why there is a limited time in which policy change can occur are:

> First, the initial enthusiasm for the issue—among the media (which can serve as a proxy for public attention) and policy makers—is likely to be quite short-lived, even for as important an issue as the September 11 attacks. Second … the "easy" solutions are often engaged and adopted first in order to do "something" after a focusing event (2004: 342).

This thesis takes Birkland's second reason for the time limit regarding policy change as simply an explanation of how aviation security policy develops as the result of an incident. It also breaks it down in to two separate points. The first is the 'need' to respond to an impetus. The second is how said 'need' can determine the speed and thus the nature of the response. 9/11 was undeniably a focusing event and one which caused all of ICAO's Contracting States, including the then fifteen Member States of the EU, to realise that aviation security policy – both of individual national governments and of the international organisations i.e. ICAO – needed to change. As can be seen in the literature, there is considerable historical evidence to support the argument that there is a certain element of truth in the suggestion that developments in aviation security policy can be attributed to a perceived need to respond to a focusing event.

All of the EU officials interviewed by the researcher – irrespective of their particular institution – provided the same answer to one of the standard interview questions. When asked what caused the EU to become involved in aviation security, the answer was resoundingly "9/11". This view is supported by the policy output. The preamble to Regulation (EC) No 2320/2002 states:

> The criminal acts committed in New York and Washington on 11 September 2001 show that terrorism is one of the greatest threats to … the very essence of the European Union … The protection of the citizen within the European Community should at all times be ensured in civil aviation by preventing acts of unlawful interference (OJ L 355, 30.12.2002: 1).

During the research, one interviewee (INT1, 2011) stated that even as Commissioners and staff were watching the live television coverage of the attacks, especially as the collapse of the twin towers of the World Trade Center occurred, there was a feeling of needing to help the US. Furthermore, Regulation (EC)

2320/2002 was created partly as a result of a need to show solidarity with the US. A number of interviewees agreed that without 9/11 it was highly unlikely that the EU would have increased their focus on aviation security let alone begun legislating this area. It is a common view that it took something of the magnitude of 9/11 to unite the Member States behind the EU taking action (INT1, 2011; INT2, 2011; INT3, 2011; INT7, 2011). Without the focusing event that was 9/11, there simply would not have been a suitable policy window for a policy entrepreneur to exploit. The evidence gained through interviewing policy-makers suggests that prior to 9/11, if the EU had tried to become involved in aviation security Member States would have refused to allow it, arguing that it was a national competence (INT1, 2011; INT7, 2011). Before 9/11, all Member States were happy with non-binding regulations at the EU level. The shock of the attacks, however, was a wake-up call, and in the aftermath security issues became a critical point in politics (INT11, 2011). It was felt that the issue was too big to be left as a national competence. There was the need to strengthen the rules - harmonisation through regulation - otherwise it would have been the same as it was prior to 9/11, which now was deemed not good enough (INT11, 2011). The Ministers of Transport decided the EU needed common *binding* rules (INT1, 2011; INT2, 2011; INT3, 2011; INT5, 2011; INT6, 2011; INT7, 2011; INT8, 2011; INT10, 2011; INT15, 2011; INT19, 2011).

It was also felt that aviation security was a matter of the utmost priority. Not only did something need to be done, but it needed to be done quickly (INT11, 2011). This concurs with Birkland's views on the window of opportunity for policy change and further supports the categorisation of 9/11 as a focusing event. The creation of Regulation (EC) 2320/2002, specifically in terms of it being the first legislation on aviation security, which only began after 9/11, was a record achievement for the EU in terms of speed in sensitive areas (INT3, 2011). There was a perceived need to act with a sense of urgency, to show that the EU could integrate security policy quickly and efficiently (INT1, 2011). It is shown in section **6-4** how this perceived requirement regarding the speed of the response determined the substance of the response.

6-2.3--Those responsible for EU involvement.

Prior to September 2001, aviation security was a national competence. However, during the extraordinary meeting of the Council convened in response to 9/11 this changed. The emergency meeting of the Council held on 14 September 2001 was a useful opportunity for the EU to show initiative (INT1, 2011), and act as a supranational policy entrepreneur. The Commission had a good case to take action on this at the EU level rather than its remaining an area to be dealt with at the national level (INT2, 2011). The shock factor of 9/11, both in its apparent suddenness and its overwhelming magnitude, and the fear regarding the cost - both human and economical - of another such attack undoubtedly influenced the opinions of the Member States. As such, The Ministers for Transport of Austria, Belgium, Denmark, Finland, France, Germany, Greece, the Republic of Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the UK all agreed that there should be involvement at the Community level.

The Commission took the lead in this. It was convenient for the EP and the Member States to let it do so, as in terms of what was needed they were paralysed by what happened (INT1, 2011; INT2, 2011; INT3, 2011, INT7, 2011; INT11, 2011; INT18, 2011). By recognising the policy window that had opened in the wake of 9/11 and responding by pushing for its involvement, the Commission demonstrated its ability to perform the role of a supranational policy entrepreneur. The shock factor of 9/11 meant that the Member States were strongly behind the Commission, taking whatever measures it felt were necessary (INT1, 2011; INT2, 2011). Policy windows even when utilised fully by bona fide policy entrepreneurs do not translate directly into legislation. The Council had simply decided that aviation security as an issue should be given attention at the Community level. This could have taken a variety of forms up to and including the achievement of a legislative competence. In fact, in many other policy areas which are related to aviation security, for example, many areas of aviation involvement at the EU level is more along the lines of communicative cooperation than legislative action. The successful exploitation of the situation – both the policy window and the ‘feeling’ amongst the Member States that resulted in the EU beginning to legislate aviation security not only

demonstrates the ability of the Commission as previously mentioned but also the strength of the Commission's ability to act as a supranational policy entrepreneur.

As aviation security had never before been an issue for the Commission, there was no clear location for it within the counter-terrorism structure. There was however one transport employee whose work dealt – albeit to an incredibly limited degree – with the subject. For reasons of practicality, in terms of staff workload, aviation security was assigned to transport not counter-terrorism. In section **6-5** this chapter shows that originally aviation security was considered to be a counter-terrorism issue. This spill-over, its initial location within transport as opposed to counter-terrorism, was more of a clerical consideration rather than a competency classification. Within the Commission's Directorate-General of Transport and Energy (DG-TREN), aviation security was incorporated into the existing division concerned with matters relating to airports. However, as both the competence and the Commission have evolved over the last decade, this is no longer the case.

It soon became clear that transport security was a bigger issue than simply aviation. As such, other areas needed to be considered. A department was created to specifically cover all aspects of transport security which at the time was considered to be necessary only for aviation and maritime. This, however, did not remain the case. Events such as the bombings in Madrid, Spain in March 2004, and London, UK in July 2005 showed that terrorism would target other modes of transport. As such, transport security was not just necessary for modes of transport tied to border security, but also within borders. Internal land-based modes of transport were also potential targets for terrorism, and ensuring the security of these required very different knowledge, experience and approaches to that of both aviation and maritime. In addition, 2008 saw the situation change once more with a re-structuring within the Commission. Each branch of transport now has a directorate responsible for all matters pertaining to that mode of transport, within which security is located. Aviation security is now the prerogative and sole task of a specially created department within the Aviation Directorate in the Commission's Directorate-General Mobility & Transport (DG-MOVE).

This sub-section has considered who was responsible for the EU becoming involved in aviation security. It has built on the foundations provided by the other two sub-sections in this section. It has shown that with the Council deciding there should be involvement at the Community level, it was the Commission who took the lead by enacting this involvement. It has also shown how this demonstrates the strength of the Commission as a supranational policy entrepreneur. It has finally considered who within the Commission was initially responsible for this involvement and how this has evolved to the present day.

6-3--Managing the new competence.

This section now turns its attention to considering the management of the new competence. It looks first at those within the EU who are responsible for aviation security, consideration is given not just to who is responsible but also how they work together. Second, this section considers the relationship of those within the EU who are involved in aviation security and their colleagues in the aviation industry. In order to ensure the thesis depicts a true unbiased representation of the situation and to allow for fully balanced analysis, this section concludes by considering the relationship from the other perspective.

6-3.1--Who in the EU is responsible for aviation security?

Sub-section **6-2.3** identified that in terms of the departmental structure of the Commission aviation security was initially placed within transport as opposed to counter-terrorism for reasons of practicality rather than for any other reason. This was due to both that DG-TREN had experience, however limited, in the area and also the heavy technical nature of the subject. It soon however became clear that this was indeed the correct location. Given the technical nature of the subject and the structure and role of the established international system, aviation security is undeniably primarily a transport matter.

Whilst there have been various changes of department over the years, this evolution has not changed the fact that the Commission locates aviation security under transport. This chapter has already shown that the Commission has acted as a supranational policy entrepreneur with regard to aviation security. It is not correct however to say that EU aviation security is solely the responsibility of the Commission's transport officials. The EU's efforts in aviation security are partly a result of the involvement of Commission officials from other Directorate-Generals. The work of these officials are concerned with other areas, most of which are primarily considered to be counter-terrorism. Despite the executive powers the Commission had upon the EU becoming involved in aviation security, it does not have carte blanche to act alone, unchecked.

It is the role of the Commission to propose legislation. All draft policy, however, is subject to scrutiny by other institutions before it can be adopted. The 2006 reform of comitology rules represents the single biggest development in the institutional roles in aviation security. Prior to 2006, the Commission was not required to involve the EP which generally resulted in its exclusion. Since the comitology reform, all policy produced in areas where co-decision applies requires the approval of both the Council and the EP (Barros, 2012).

Excluding the Commission, the premier institution is the Council. It has largely been the Member States acting through the Council who have exerted influence over the policy which has been enacted. As Member States have been involved in aviation security since its inception in the 1970s, the Council has considerably more experience in the area than the Commission (INT1, 2011). Moreover, the Member States have more established relationships with the various international organisations than the other institutions, and the primary strength of being ICAO Contracting States which the EU is not (INT16, 2011; INT19, 2011; INT23, 2011). Through the auspices of the Council, Member States have direct involvement in aviation security from two differing angles – transport and counter-terrorism (INT5, 2011; INT14, 2011). It has mainly been the transport committee of the Council which has provided the legislative direction to the Commission (INT8, 2011). Whilst

co-decision makes the EP equal to the Council theoretically, in reality this will never be true as the EP does not have the resources of the Council (INT1, 2011).

Furthermore, the EP has no formal involvement with the Commission concerning the drafting of policy. This does not however negate the importance of the EP's involvement in aviation security. Within the EP, aviation security is primarily a matter for the Transport and Tourism committee, but has also been an issue for the Civil Liberties, Justice & Home Affairs committee. Through these committees the EP can influence policy by lobbying the Council through the relations between MEP's and their respective national Ministers (INT10, 2011). In terms of the policy produced, the EP has been relatively accepting with regards to EU involvement in aviation security. This is largely because the EP comprises elected politicians and not technical experts, and the majority of the legislation has been of a highly technical nature.

The EP has however exerted significant influence over aviation security policy in a number of instances by exercising its right to veto. The most notable instance was in relation to the issues of: Liquids, Aerosols and Gels (LAGs) The objection to the issue of LAGs restrictions following the 2006 liquids plot was motivated by facilitation concerns. This highlights the unique strength of the EP in EU aviation security: that of whom it represents. There are organisations representing various sectors of the industry; airports, airlines, pilots and cabin crew, equipment manufacturers and service providers. There is however no organisation representing passengers. The EP is the only institution that directly gives voice to the travelling public through MEP's representation of their constituents (INT10, 2011). The EP has also vetoed policy concerning the technologies and equipment for the security scanning of the human body which are more commonly referred to as body scanners, the cause of the objections being the civil liberties issue (Barros, 2012).

It is the presiding argument of this sub-section, and this chapter that that aviation security should primarily be the responsibility of those who work in transport,

specifically aviation. The following chapters build on what was established in Chapter **5** that aviation security should not simply result from governments, whether national or supranational. Aviation security was, for good reason, always regulated by the international system.

6-3.2--Policymakers perception of the relationship with the industry.

In both this sub-section and sub-section **6-3.3**, 'industry' is not referring solely to commercial organisations. Rather it is used as an umbrella term, covering those (excluding EU governmental institutions) involved in the regulation of EU aviation security: Member States and representative bodies. The issue of transparency in EU governance has become a big issue over the ten year history of aviation security, and as such there has been a concerted effort to increase consultation of stakeholders (INT1, 2011; INT2, 2011; INT3, 2011; INT7, 2011; INT11, 2011; INT22, 2011). When asked during interviews, all Commission officials consulted agreed that the EU believes the relationship with industry to be of the utmost importance. This was generally considered to be primarily due to the experience of the industry especially given, as has been previously stated, the lack of experience of the EU in aviation security. The Commission is very close to the industry - they listen to the big industry organisations as it is these organisations that have the technical competence and therefore they are vital to the EU: the EU needs the industry as they often know more (INT1, 2011; INT2, 2011; INT3, 2011; INT7, 2011; INT11, 2011). Strong relations with industry are considered especially important in aviation security research as only it can provide an experienced, balanced and rounded view, but the EU does not want to select any one above the others and, as such, during projects will only consult those organisations who form a consortium (INT22, 2011).

There has long since been the prominent criticism of aviation security that, left to its own devices, the industry has shown itself to have a tendency to sacrifice security at the altar of profit (Wilkinson, 2007). This view was supported by one interviewee who suggested that consultation of stakeholders is incredibly important, however, one must consider that objections may have an economical base, rather than a matter of security (INT10, 2011). Many interviewees agreed that

the issue of security costs was a genuine concern when consulting stakeholders (INT2, 2011; INT3, 2011; INT7, 2011; INT11, 2011; INT22, 2011). There has to be a balance achieved as if the EU consults the industry for advice, the replies should be constructive. There is no room for positions based on economical concern. The industry needs to both address risks and to aid the EU in making the rules required to counter these risks to be as least impacting on operations as possible.

6-3.3--The Industry's perception of the relationship with the EU.

This sub-section now looks at this relationship from the opposite perspective – that of the industry. In sub-section **6-3.2** many of the policy-makers interviewed commented on the issue of policy versus profits. This was also addressed by the industry officials albeit from a different perspective. A common viewpoint seemed concerned with the balancing act of ensuring a high enough level of security without crippling operations. In addition, there was a general theme amongst those officials from the industry that security is in essence a risk-based system designed to reduce the threat to the minimal level possible but realising that aviation would never be one hundred percent secure.

When asked about the relationship between the EU and the industry, one interviewee described it as essentially stating that the industry has an operational view rather than a political view, they will know whether something is operable or not (INT12, 2011). This was supported by the view that consultation with the industry by the EU is imperative, without it legislation may be enacted that may be un-implementable (INT9, 2011). The importance of experience when regulating such a technical area as aviation security was also highlighted once again. Most interviewees concurred that Regulation (EC) No 2320/2002 was essentially 'un-implementable' (INT 9, 2011; INT12, 2011; INT15, 2011; INT21, 2011; INT23, 2011).

This resulted in early relations being fraught. The Commission thought that the industry's objections were financially motivated (INT2, 2011; INT3, 2011; INT7, 2011; INT11, 2011; INT22, 2011). Whereas, in fact the objections were actually operational (INT9, 2011; INT12, 2011; INT13, 2011; INT15, 2011; INT16, 2011;

INT17, 2011; INT20, 2011; INT21, 2011; INT23, 2011; INT24, 2011). As the Commission gained experience, it came to understand the industry's viewpoint and recognise that objections were not solely for the sake of profits but were based on practical concerns (INT9, 2011). All industry representatives interviewed concurred in their assessment of the relationship – that the Commission is dependent on Stakeholders' for the practical assessment of policy drafts. None of the interviewees considered the current relationship to be conflictual. Rather, that the EU and the industry share a harmonised aim of implementable legislation mandating the highest level of security practically possible (INT15, 2011).

6-4--The importance afforded by the EU to common standards in aviation security.

Sub-section **5-2.3** considered the importance of common basic standards from an international perspective. Given that the thesis is concerned with the role of the EU in aviation security, this section now considers the issue with specific emphasis being placed on the EU. This section begins with a brief consideration of why establishing an EU common standard in aviation security was the specific focus of the EU's initial efforts in the area of this new competence. It then assesses the importance afforded to common standards from the perspective of policy output, policy-makers, and the European aviation industry respectively.

6-4.1--<u>Common standards as a specific focus of EU aviation security.</u>

It was explained in sub-section **6-2.2** that one of the reasons the EU became involved in aviation security was the perceived need for legislative homogenisation. That, all Member States should be legally required to enact the same rules. In other words to operate to a common standard. It has been shown that the EU's approach of making the establishment of a common standard its first act upon developing the new competence of aviation security was incredibly sensible. It cannot however be called original. Instead the approach is better described as following in the footsteps of those who have gone before. As can be seen from the previous chapter, those responsible for aviation security prior to the EU becoming involved

have always focused their regulatory approach on common standards. This therefore set a precedent the EU would have been amiss not to follow.

6-4.2--The EU's policy on common standards in aviation security.

Whilst sub-section **6-2.2** has shown that in the immediate aftermath of the focusing event that was 9/11, the national governments of Member States welcomed the EU involvement, the EU recognised that aviation security had previously been a national competence and one they had no experience with. As such Regulation (EC) No 2320/2002, the EU's first legislative effort as part of the new competence, simply translated ECAC's Doc 30 into EU Law. This does not however lessen the strength of the Commission as a supranational policy entrepreneur, by doing so the Commission made the formerly optional common standards mandatory. As was seen in Chapter **5**, ECAC Doc 30 is solely concerned with common standards. Sub-section **6-4.1** has stated that establishing common standards in aviation security was the primary focus of this involvement. This is supported by the legislation. In Regulation (EC) No 2320/2002, the reason for the EU's initial efforts in aviation security being concerned with the establishment of common standards is given as:

> Since the objectives of the proposed action, namely the establishment and application of appropriate provisions in the field of air transport policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of the Europe-wide scope of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation confines itself to the common basic standards required in order to achieve the objectives of aviation security and does not go beyond what is necessary for that purpose (OJ L 355, 30.12.2002: 2).

It can therefore be inferred that the EU considers common basic standards alone to be sufficient to ensure the security of civil aviation. Furthermore the legislation produced by the EU on common basic standards therefore implies that not only are they of the utmost importance in aviation security, but that efficient and effective aviation security is not possible without common basic standards. EU policy documents by their very nature are legal documents. Therefore, they tend to be 'dry' in the sense that they are factual and implicit due to the requirement to be translated in to multiple languages. As a result of this and by themselves, policy

documents on common standards in aviation security may not necessarily give a wholly true and rounded depiction of the prominence afforded to common standards.

6-4.3--The perspective of EU policymakers.

The perspective of this sub-section is based solely on data obtained from interviews conducted with officials from the Commission, EP and the Council. All interviewees agreed that not only were common standards indeed the single primary focus at the time of the EU developing the new competence of aviation security, but that this has remained true in the intervening decade (INT1, 2011; INT2, 2011; INT3, 2011; INT4, 2011; INT5, 2011; INT6, 2011; INT7, 2011; INT8, 2011; INT10, 2011; INT11, 2011; INT14, 2011; INT16, 2011; INT18, 2011; INT19, 2011; INT20, 2011; INT22, 2011). It can be ascertained from the data collected that ensuring common standards in aviation security was the aim of the EU's involvement in the area. This answers the fifth specific research question: What did the EU set out to achieve by becoming involved in aviation security? Chapters **7** and **8** both determine whether or not this aim was achieved and analyse the value of this.

6-4.4--The perspective of the European aviation industry.

This sub-section uses the same view of 'industry' as that used in section **6-3** – outlined in sub-section **6-3.2**. That of an umbrella term referring to all non-EU government bodies involved in the regulation of EU aviation security.

The primary body to be considered is ECAC. Given that security was not a prominent issue at the time ECAC was established, it did not feature in its original remit. This remit was two-fold: safety, and the facilitation of international air travel. As with other regulatory bodies involved in international aviation, ECAC began developing security policies in the 1970s. In line with its established modus operandi, ECAC's efforts in security were concerned with establishing standards all Member States agreed to over and above the SaRPs contained in Annex 17 of the Chicago Convention. In practice, this is the creation of Doc 30, which is the recommendation

of ECAC regarding the common standards that should be applied in aviation security. It is, therefore, fair to say that ECAC considers common standards to be of the utmost importance in aviation security. This was confirmed by data obtained during interviews (INT13, 2011; INT16, 2011; INT21, 2011; INT23, 2011).

The EU's initial efforts in aviation security were to establish an EU wide common standard by mandating ECAC's recommendations. It can therefore be inferred that ECAC would consider that the EU affords the same prominence to common standards in aviation security as ECAC itself does. The forty-four of the one hundred and ninety-two ICAO Contracting States which make up ECAC includes all twenty-seven Member States of the EU. It can therefore be inferred that the importance afforded to common standards in aviation security by EU Member States is the same as that of ECAC. This section has shown the importance afforded to common standards as stated in the legislation, and from the perspective of both policy-makers and those in the industry. The initial legislation produced by the EU on developing the new competence suggests that the EU considers the legislating of common standards to be the main policy objective. From the data obtained during the research, it can be seen that EU policy-makers consider common standards to be of the utmost importance in the EU's involvement in aviation security. This section has also demonstrated that the European aviation industry affords the same importance to common standards as their counterparts in the international system.

6-5--Aviation security as part of EU counter-terrorism.

This section is concerned with the issue of the classification of aviation security as a political area, more specifically its relation to and/or place within counter-terrorism. It attempts to answer the sixth specific research question this chapter is concerned with. This is: Where does aviation security fit within EU politics? Sub-section **6-2.1** has shown that it was only in the post-9/11 era that the EU developed aviation security as a competence, and that involvement in this area did not begin until 14 September 2001. Sub-section **6-2.2** has explained that it was directly because of the

policy window created by the terrorist attacks of 9/11 that this involvement occurred. 9/11 undeniably represented an evolution in terrorism. This advance in innovation was not simply limited to operational choices of both delivery method and target, but rather the planning and preparation stages of the attacks also. In the immediate aftermath of 9/11, all Western governments not just the Member States of the EU were concerned with the protection of citizens and critical infrastructure within their borders. This required the strengthening of counter-terrorism capabilities to the fullest extent possible.

The immediate effect of 9/11 was a feeling amongst EU policymakers of needing to react to the situation. Furthermore, it was perceived that the reaction needed to be the swift and effective integration of security policy. This reaction not only required a sense of urgency but also needed to be wider than simply ensuring no other terrorists committed suicide hijackings and turned the aircraft into missiles to be flown into strategic ground base targets. Aviation security was not the only field affected by the events of 9/11. The speed of the EU in addressing aviation security in response to 9/11 compared to other areas was justified by the very nature of the attacks. It was, however, viewed both by the Transport Ministers of the Member States present in the Council meeting of 14 September 2001, and by the wider Council, that addressing the issue of aviation security was not the extent of the EU response to 9/11. Rather beginning EU involvement in aviation security was simply one of the first steps in the counter-terrorism reaction to the new and renewed terrorist threat which presented with the attacks of 9/11 (INT5, 2011; INT6, 2011; INT10, 2011; INT14, 2011).

Initially, by those concerned the development of the new competence, aviation security was considered to be an extension of counter-terrorism (INT1, 2011; INT4, 2011; INT5, 2011; INT6, 2011; INT7, 2011; INT10, 2011; INT11, 2011; INT14, 2011). In sub-section **6-2.1**, this chapter defined the aim of aviation security as preventing acts of unlawful interference. It was also shown in Chapter **5** that this unlawful interference has, since before the turn of the century, mainly emanated from a single source: terrorism. It can therefore be argued that a central tenet of aviation

security is to prevent acts of terrorism against aviation. This, therefore, justifies the inclusion of aviation security under the umbrella of counter-terrorism. This is further reinforced by the fact that the EU's efforts in aviation security are a result of the involvement of not just transport officials, but also officials whose work is concerned with other areas, which are primarily considered to be counter-terrorism. It was also shown in sub-section **6-3.1** however that aviation security should primarily be the responsibility of those who work in transport, specifically aviation. Therefore it is the argument of this chapter that, as a political competence, it is acceptable to consider aviation security as one of many aspects that together comprise a multi-faceted counter-terrorism strategy. It is however imperative that as a day to day issue, aviation security is under the control of those with the necessary experience and knowledge.

6-6--Conclusion.

This chapter has been concerned with the first of the three empirical chapters that formed the basis of the research for this thesis. This is the development of the new competence: EU involvement in aviation security. This chapter was concerned with identifying and examining the details of the EU becoming politically involved in the new area of aviation security. It was principally concerned with when, why and who in the EU would become involved in the area. In the latter sections, the chapter was then concerned with the how and what of the EU's initial involvement in aviation security. Finally, the chapter was concerned with the where of aviation security – the location of the new competence within the EU's existing political remit. This chapter has examined the EU's development of aviation security as a political competence in the wake of 9/11. In order to analyse this it has used a combination of the concept of focusing events associated with agenda setting theories, the neofunctionalist concept of spill-over and the theory of SPE.

Prior to September 2001, aviation security was not an area the EU was concerned with. It has answered the first specific research question stating that it was only

after 9/11 that the EU became involved in aviation security and that this involvement began with an emergency meeting of the Council on the 14 September 2001. Sub-section **6-2.2** explained that this is due to Member States having previously considered aviation security to be, as a matter of sovereignty, a national competence. It took a not only a focusing event, but something of the magnitude of 9/11, for Member States to welcome EU involvement. In the aftermath of the attacks, the Member States felt there was a need to strengthen aviation security and thus attention and action at the Community level was necessary. This answers the second specific research question of why the EU became involved in aviation security which was as a direct result of the 9/11 attacks. After it had been decided that there should be EU involvement in aviation security, it was the Commission who took the lead in this. This answers the third specific research question of: Who was responsible for EU involvement in aviation security? Given the overwhelming character of 9/11 and the technical nature of aviation security, both the Council and the EP supported the Commission in doing so. It was also shown that the actions of the Commission in developing the new competence demonstrates both the ability of the Commission to act as a supranational policy entrepreneur and moreover the strength of this ability. Furthermore it was also shown in sub-section **6-2.3** that EU efforts in aviation security upon its inception were located within transport as opposed to counter-terrorism.

Section **6-3** has answered the fourth specific research question: How does EU involvement in aviation security function? Sub-section **6-3.1** has determined that in terms of the day to day workings of aviation security it is mainly transport officials from the Commission who work closely with counter-terrorism officials. Whilst the Commission proposes legislation on aviation security, whether or not this comes to pass is in the hands of both the Council and the EP. Sub-sections **6-3.2** and **6-3.3** considered the relationship between the EU and the industry from both perspectives. Both sides were in agreement that cooperation between policy-makers and industry is vital for strong EU aviation security given the difference in levels of experience and technical knowledge. A noticeable difference in view however is apparent when considering the specifics of policy. Sub-section **6-3.2**

showed that policy-makers tend to assume the industry is criticising aspects of policy on economic grounds – simply to preserve profit margins. Sub-section **6-3.3** however showed that one of the industry's main criticisms is that the economic cost of a policy renders it inoperable. Neither want legislation which is un-implementable.

Sub-sections **6-4.1** and **6-4.2** have shown, and the following two chapters also show, that irrespective of the subject matter of the measure being introduced, the EU's approach has remained unchanged in the decade since developing the new competence. This approach is to legislate common standards regarding the issue in question. Sub-section **6-4.3** has answered the fifth specific research question stating that what the EU set out to achieve by becoming involved in aviation security was the creation of common standards at the Community level. Section **6-5** has answered the sixth and final specific research question. It has shown that whilst aviation security is a specific matter within transport it is also an aspect of counter-terrorism. Through the analysis of the material in order to answer these six specific questions, this chapter has examined the beginnings of the EU developing the new competence by becoming involved in aviation security.

7--Initial efforts in aviation security.

7-1--Introduction.

The previous chapter was concerned with the first of the three empirical chapters that form the basis of this thesis, that of the development of the new competence: EU involvement in aviation security. Now that the thesis has established the origins of the EU's involvement in aviation security, it turns its attention to examining the EU's efforts in aviation security. Subsequently, therefore, this chapter is concerned with: EU initial efforts on aviation security, which is a systematic analysis of the results of the first legislation. This chapter can be broken down into three specific topic areas. The first specific topic area considers the EU's policy on aviation security in general. The second specific topic area is concerned with how the EU involvement in aviation security is perceived by those involved. The third specific topic area this chapter is concerned with is the real world application of the legislation analysed in the chapter.

The research question that this thesis as a whole aims to answer is: **To what extent has EU involvement in aviation security occurred as a result of 9/11 and what effects has this had?** This chapter, therefore, aims to answer the following sub-questions:

1. What has the EU achieved with its initial legislation on aviation security?
2. What does the initial legislation show needs to change regarding EU efforts in aviation security?
3. What practical effect does the EU determine its policy to have had?
4. How is EU involvement in aviation security thought of by the industry?

In terms of analysis the first specific topic area is concerned with the EU's aim of its involvement in aviation security. This is with regards its initial intentions concerning the subject and also the scope of this involvement. In order to answer the chapter's first specific research question, it refers back to Chapter **6**, where the thesis used a combination of both focusing events and SPE as the framework for the analysis. The second and third specific topic areas are concerned with answering the third and

fourth specific research questions. In order to answer questions two, three and four, the chapter needed to utilise a combination of all three components of the theoretical framework to conduct the analysis.

7-2--EU aviation security policy.

There are certain parameters that have been applied to this examination. The foremost of them is the time period in question. In Chapter **4**, the thesis looked at the issue of source material, in terms of the sensitive nature of the documents to be considered and more importantly the limited nature of the quantity of these. It was shown in Chapter **5** that aviation security as a field is relatively new with respect to other areas under the counter-terrorism umbrella. It is only an issue that came to be considered within the last fifty years. Moreover, the previous chapter found that the EU only became involved in the area as a result of 9/11, putting it very much in its infancy. Whilst Chapter **5** considered the origins of aviation security from the creation of the international aviation organisations, this was to provide context for the specific subject matter of the thesis – EU aviation security, which only occurred in late 2001. As such, the starting point for the analysis of the EU's efforts in this area cannot be disputed. Any evaluation of EU aviation security should begin at the point which it originated: 11 September 2001. As the EU's initial efforts in aviation security were concerned with Regulation (EC) No 2320/2002 this chapter focuses on the legislation associated with this. It considers all legislation up to the legislation repealing Regulation (EC) No 2320/2002.

Particular legislative efforts considered in this chapter have been categorised as either key or notable. Key pieces of legislation are primarily 'umbrella policies'. They refer to whole sections of aviation security measures such as common standards or implementing rules rather than specific points. The key pieces of legislation represent significant changes in EU aviation security policy. Notable pieces are those which despite a limited or singular focus either represented a policy shift or

focused on an issue significant enough to impact across multiple areas of EU efforts on aviation security.

The legislation that is considered to be of particular importance by this chapter are the following pieces. There are the key pieces. These are Regulation (EC) No 2320/2002 and Regulation (EC) No 622/2003.[7] In addition there are also the notable pieces. These are: Regulation (EC) No 1217/2003;[8] Regulation (EC) No 1486/2003;[9] and Regulation (EC) No 1138/2004.[10]

As was determined in the previous chapter, 2001 saw the beginnings of EU involvement in aviation security with the legislative proposal that would become policy document Regulation (EC) No 2320/2002, the only legislation of that year. The following year saw three pieces of legislation: a key piece and two notable pieces. 2004 gave rise to another notable piece as well as two others. 2005 was a very quiet year with only two pieces of legislation being passed, neither of which are of any great significance. This was in fact a pattern which held for the next two years with six and three pieces of legislation being passed in 2006 and 2007 respectively.

The following table lists all the pieces of legislation covered in this chapter. It provides in chronological order, an overview of each policy listing; the date of acceptance, the subject matter of the policy and the reason for drafting. The Regulations in bold type are the key pieces of legislation and the Regulations in Italics are the notable pieces.

[7] Commission Regulation (EC) No 622/2003 of 4 April 2003 laying down measures for the implementation of the common basic standards on aviation security.
[8] Commission Regulation (EC) No 1217/2003 of 4 July 2003 laying down common specifications for national civil aviation security quality control programmes.
[9] Commission Regulation (EC) No 1486/2003 of 22 August 2003 laying down procedures for conducting Commission inspections in the field of civil aviation security.
[10] Commission Regulation (EC) No 1138/2004 of 21 June 2004 establishing a common definition of critical parts of security restricted areas at airports.

Legislation	Date	Purpose of Legislation	Reason for drafting
Regulation (EC) No 2320/2002	**16 December 2002**	**Create common basic standards across all areas of aviation security**	**9/11**
Regulation (EC) No 622/2003	**4 April 2003**	**Create implementing measures for common basic standards of Regulation (EC) No 2320/2002**	**Implement Regulation (EC) No 2320/2002**
Regulation (EC) No 1217/2003	*4 July 2003*	*specifications for national civil aviation security quality control programmes*	*Required by Regulation (EC) No 2320/2002*
Regulation (EC) No 1486/2003	*22 August 2003*	*Procedures for Commission inspections in aviation security*	*Necessary to ensure implementation*
Regulation (EC) No 68/2004	15 January 2004	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic
Regulation (EC) No 849/2004	29 April 2004	Amending Common basic standards	Correct Regulation (EC) No 2320/2002 failings
Regulation (EC) No 1138/2004	*21 June 2004*	*Definition of critical parts of security restricted areas at airports*	*Physical diversity of EU airports*
Regulation (EC) No 781/2005	24 May 2005	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic
Regulation (EC) No 857/2005	6 June 2005	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic
Regulation (EC) No 65/2006	13 January 2006	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic
Regulation (EC) No 240/2006	10 February 2006	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic
Regulation (EC) No 831/2006	2 June 2006	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic
Regulation (EC) No 1448/2006	29 September 2006	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic
Regulation (EC) No 1546/2006	4 October 2006	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic
Regulation (EC) No 1862/2006	15 December 2006	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic
Regulation (EC) No 437/2007	20 April 2007	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic
Regulation (EC) No 915/2007	31 July 2007	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic
Regulation (EC) No 1447/2007	13 December 2007	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic
Regulation (EC) No 23/2008	11 January 2008	Amending measures for implementing	Regulation (EC) No 2320/2002 problematic

Figure 6 – Chapter 7 Legislation

7-3--Regulation (EC) No 2320/2002 and associated legislation.

This section is mainly concerned with the first key piece of legislation: Regulation (EC) No 2320/2002. There are two pieces of legislation which pertain directly to Regulation (EC) No 2320/2002: Regulation (EC) No 849/2004,[11] and Regulation (EC) No 1217/2003. The previous chapter showed EU legislative efforts in aviation security occurred as a result of the focusing event of 9/11 with the convening of an extraordinary meeting of the Council on 14 September 2001. At this meeting it was decided that the resulting policy window should be exploited – that there should be involvement at the Community level. As such, EU legislation on aviation security began in October 2001 with the Proposal for a Regulation of the Parliament and the Council on establishing common rules in the field of civil aviation security. In January 2002, this progressed further with the Common Position (EC) No 25/2002.[12] By the end of 2002 the ability of the Commission to act as a supranational policy entrepreneur in aviation security was proven. Fifteen months after the 9/11 attacks, the EU had expanded the political reach of its counter-terrorism remit by developing a new competence: that of aviation security. This was achieved with the passing of Regulation (EC) No 2320/2002.

The preamble to Regulation (EC) No 2320/2002 states that the reasoning behind Regulation (EC) No 2320/2002 is that 9/11 showed the ever present nature of terrorism and the threat it poses. As a result 'the protection of the citizen within the European Community should at all times be ensured in civil aviation by preventing acts of unlawful interference' (OJ L 355, 30.12.2002: 1). This further supports the argument made by this thesis, as outlined in section **6-5**, that EU aviation security is considered by the EU to be an important aspect of its counter-terrorism efforts. The preamble to Regulation (EC) No 2320/2002 also states that this protection is to be ensured 'by the adoption of appropriate provisions in the field of air transport

[11] Regulation (EC) No 849/2004 of the European Parliament and of the Council of 29 April 2004 amending Regulation (EC) No 2320/2002 establishing common rules in the field of civil aviation security.

[12] The Common Position (EC) No 25/2002 adopted by the Council on 28 January 2002 with a view to adopting Regulation (EC) No . . ./2002 of the European Parliament and of the Council of . . . establishing common rules in the field of civil aviation security.

policy establishing common basic standards' (OJ L 355, 30.12.2002: 1). Furthermore, 'these common basic standards are to be based on the current recommendations of the European Civil Aviation Conference (ECAC) Document 30' (OJ L 355, 30.12.2002: 1-2). In this – the EU following the lead of the industry, and the mandating of ECAC's standards rather than creation of its own, the legislation lends credence to a central aspect of the argument of this thesis as presented in Chapters **5**, **6, 7** and **8**. This is that aviation should, as it always had been, be regulated by the industry more than government. This is due to the fact that given the technical nature of aviation security it is not a subject where policies can be written successfully by those who do not have sufficient experience and thus understanding of it. This is the reasoning which is also behind the argument presented in sub-section **6-4.1** that aviation security in terms of a political competence belongs under the purview of transport more than it does counter-terrorism.

In Article 1 – Objectives, Regulation (EC) No 2320/2002 states that the main aim of the Regulation is to put in place across the Community the relevant measures to ensure against acts of unlawful interference. Also the legislation aims to provide Member States with a common interpretation of Annex 17 of the Chicago Convention – ICAO's security policy. These objectives are to be achieved through a two-fold methodology. Firstly, the creation of EU common basic standards regarding aviation security measures. Chapter **5** illustrated how common basic standards have been the substance of aviation security since its inception. In the previous chapter, sub-section **6-5.1** has shown that this establishing of common basic standards was in fact the aim of the EU's involvement in aviation security. As such it is not only unsurprising but expected that this would therefore be the primary objective of the first piece of legislation in this area. The second aspect of the aforementioned method is the 'setting up of appropriate compliance monitoring mechanisms' (OJ L 355, 30.12.2002: 2). Again, with this, the EU is still following in the footsteps of the other various bodies who dealt with aviation security prior to the EU becoming involved. Both ICAO and ECAC have a history of auditing and inspecting their States. This does not however negate the significance of this objective. Chapter **5** has shown that a weakness of aviation security is that

the international organisations can only make recommendations but that they have no enforcement power. By legislating compliance monitoring, the EU can ensure the common basic standards are being implemented, which is of the utmost importance. This spill-over from common standards to compliance monitoring further demonstrates the strength of the EU as an actor in aviation security and also the Commission's ability as a supranational policy entrepreneur.

The preamble to Regulation (EC) No 2320/2002, confirms the point made in Chapter **5** of this thesis, that civil aviation is a diverse field and as such security cannot be of a single specific form but rather should be comprised of many different facets. It is for this reason that organisations like ICAO have always recommended general standards and levels as opposed to particular measures. The Regulation acknowledges that security measures need to be tailored to the specific aviation activities they pertain to, in order to ensure that implementation is achievable. This is enabled by way of a provision for Member States to enact different measures in certain specified circumstances. One such area that the Regulation specifically mentions is that of small airports. Small airports are defined as: those who have a commercial flight average per annum of no more than two a day, those dealing with General Aviation only, or, those where commercial activity is limited to small aircraft, either a maximum of twenty seats and/or a maximum take-off weight of ten tonnes.

In paragraph nine of the preamble, Regulation (EC) No 2320/2002 suggests the EU appears to again be following in the footsteps of the international organisations by acknowledging that successful implementation is most attainable when done at the national level. Each Member State is required to 'designate a single appropriate authority responsible for the coordination and the monitoring of the implementation of aviation security' (OJ L 355, 30.12.2002: 1). Under the Regulation, Member States are also instructed that within three months of the legislation entering into force, they are to establish national aviation security programmes (NASPs) for civil aviation. Other than the statement that these NASPs are to include National Quality Control Programmes (NQCPs), air carrier and airport

security programmes and also training programmes, the Regulation does not elaborate any further on this matter. The exception is compliance monitoring. The Regulation specifically states that the appropriate authority is to ensure quality control audits use a common methodology and are conducted by those who are trained to a common standard, and that there will be inspections conducted at the Community level. This however is the subject of Regulation (EC) No 1217/2003 which is considered later in this chapter.

It has been previously found that Regulation (EC) No 2320/2002 was created with the aim of establishing common rules in aviation security across the Community. When read, the Regulation appears to show that the objective was not in fact simply legislating a common basic standard which Member States had to adhere to. Rather that in order to ensure harmony of standards, it was designed to take decision-making on aviation security out of the hands of the Member State and place it under the purview of the EU. As a result, the legislation would therefore mean that Member States who had been dealing with the issue for decades were now subject to control by a supranational policy entrepreneur which has no experience in the matter. There is evidentiary support for such an argument. Even in the specified circumstances such as that of small airports, Member States may only enact different measures on the proviso that the Commission considers both that such divergence is justified and that the alternative program provides a suitable level of security. Under closer inspection however, the legislation does not completely remove the Member States from the equation. In point ten of the preamble the Regulation raises the issue that Member States should be given the possibility of applying more stringent measures. This issue is resolved in Article 6 which states that Member States do have the right, although they are required to inform the Commission of the nature of such measures as soon after they are applied as possible. The conditions surrounding this issue will eventually become the sole subject of a piece of legislation – Regulation (EU) No 1254/2009 which is considered in section **8-7**.

Article 9 of the Regulation states that the 'Commission shall be assisted by a committee composed of representatives from the Member States and chaired by a representative of the Commission' (OJ L 355, 30.12.2002: 4). Whilst the Regulation does convey control of aviation security from the national level to the Community level, it does not make the Member State redundant. By acknowledging the need of assistance from the Member States, the admission is made that the Commission's lack of experience in aviation security must be countered if it is to be able to successfully be in control.

Furthermore, Regulation (EC) No 2320/2002 concedes that it is not just the lack of experience which has implications for its ability to control aviation security but also the EU's lack of a recognised position in the established international system. Article 10 is concerned with third countries. It states that the Commission should, with the aid of the committee, broach the subject with the relevant international organisations of 'the possibility to develop a mechanism to assess whether flights coming from third country airports meet the essential security requirements' (OJ L 355, 30.12.2002: 4). As the EU is not an ICAO Contracting State due to not being a signatory to the Chicago Convention nor has ECAC membership, it cannot directly make such a request and thus is reliant on the agreement and assistance of the Member States.

It has already been mentioned that Regulation (EC) No 2320/2002 is based on the recommendations and standards of ECAC Doc 30 which is reproduced in the Annex to the Regulation. This was thus the content of the EU's first piece of legislation in the field of aviation security. Upon review, the content of the Annex - ECAC's Doc 30, actually contains more specific standards than general levels. When these are rewritten from recommendations into requirements problems can occur upon implementation. As such sixteen months later, Regulation (EC) No 849/2004 was passed. Regulation (EC) No 849/2004 stresses in the preamble that it does not seek to change the scope of Regulation (EC) No 2320/2002 but rather make technical amendments.

Regulation (EC) No 849/2004 consists of four areas. The first is mentioned in the preamble as to why Regulation (EC) No 2320/2002 should be amended. This is the issue of small airports. Regulation (EC) No 849/2004 is concerned with the issue of security restricted areas (SRA) and introduces the definition of a demarcated area as 'an area that is separated from other security restricted areas by means of access control' (OJ L 158, 30.4.2004: 2). Under Regulation (EC) No 849/2004 the allowance for small airports to adopt alternative measures is expanded. This allowance may also be applied to demarcated areas at airports which deal solely with general aviation or those with commercial activity limited to small aircraft as defined earlier in this section. Whilst this expands the scope of the area which a Member State may regulate independent of the EU, they are still required to inform the Commission of such deviations. Airport security programmes are required to show if a demarcated area exists. The Regulation also states '[e]ach flight originating from a demarcated area of an airport shall indicate this fact to the destination airport in advance of the arrival of the flight' (OJ L 158, 30.4.2004: 4). This is the first instance with regard to aviation security of the EU governing communications between, and even within, Member States.

Another aspect of Regulation (EC) No 849/2004 concerns the language used in Regulation (EC) No 2320/2002 Article 7 – Compliance monitoring. 'Audited' is replaced with 'monitored', 'Audits' with 'compliance monitoring activities', 'Auditors' with 'persons', and 'Audit reports' with 'compliance monitoring reports'. In this it would appear that the EU is trying to portray an image of cooperation rather than control. The EU, due to its inexperience in aviation security, does not have personnel who are capable of auditing the quality of aviation security within Member States. It does however have a history of inspecting whether Member States are compliant with legislation in other areas. This suggests that the EU views its role in aviation security as acting as a supranational policy entrepreneur by harmonising legal requirements across national borders, and assisting Members States to have faith in the success of this by ensuring implementation.

Another aspect of the amendments Regulation (EC) No 849/2004 makes to Regulation (EC) No 2320/2002 is concerned with the shipment of prohibited articles in time sensitive mail. Time sensitive mail is that with a delivery time of less than forty-eight hours. The Annex to Regulation (EC) No 2320/2002 stated that time sensitive mail was to be subject to the necessary security controls to ensure against the carriage of prohibited articles (OJ L 355, 30.12.2002: 14). Under Regulation (EC) No 849/2004 time sensitive mail may contain prohibited articles so long as they have been declared and properly subjected to the applicable safety measures. This clarification of the legislative requirements concerning time-sensitive mail, has not expanded the scope of EU aviation security. It has however further conveyed decision-making from the Member States to the Commission thus demonstrating the applicability of the concept of build-up as defined by Schmitter (Niemann & Schmitter, 2009). What is considered a prohibited article was previously a matter which was to an extent at the discretion of the Member State – certain specific objects and any item the Member State deemed to be a threat. Whilst this alters the control Member States have over items allowed to be carried on commercial aircraft, it does not directly seek to minimise the role of the Member State. Rather the aim is to ensure all Member States will allow or prevent the same items as each other, thereby achieving the EU's aim of harmonising standards for the benefit of all.

The final aspect of Regulation (EC) No 849/2004 concerns the screening of hold baggage in certain circumstances. The Annex to Regulation (EC) No 2320/2002 states in the section concerned with the screening of passengers that the national appropriate authority 'may create categories of persons that shall be subject to special screening procedures or exempted from screening' (OJ L 355, 30.12.2002: 10). Regulation (EC) No 849/2004 represents a vertical spill-over from the screening of these individuals to the screening of their hold baggage. The widening of the scope of the national appropriate authority to dictate special procedures and exemptions to be applied to such aforementioned persons means the autonomous power given to the national appropriate authority is increased. This reflects that Member States have more experience in the subject and know better what level of

security should be applied to whom. It also acknowledges the point made in Chapter **5** – that the threat level and nature of the threat differs amongst Member States as a result of their individual histories, as well as their foreign and domestic politics. The final policy document which pertains directly to Regulation (EC) No 2320/2002 is one of the noteworthy pieces of legislation, as such it is considered in section **7-5**.

With the passing of Regulation (EC) No 2320/2002, EU aviation security began. The creation and passing of comprehensive legislation on such a complex and diverse topic area constitutes a large task even with experience of the subject. The rapidity with which the EU moved into aviation security suggests the focus was on the occurrence of action rather than the substance of it. The self-proclaimed justification for Regulation (EC) No 2320/2002 was the need of the EU to ensure the safety of Europeans within its borders - by protecting civil aviation from acts of unlawful interference. In essence, to ensure another 9/11 could not happen in Europe. As the EU was aware the Member States were, however, already doing this, the policy the EU produced was not the creation of new procedures for aviation security, but rather the legislating of that which was already in place. This, therefore, suggests the post-9/11 expansion of counter-terrorism to include aviation security was primarily a symbolic show of strength. Given the magnitude and nature of the threat, to mitigate it the EU needed to move quickly to appear strong and in control. The easiest and most effective way was to render the voluntarily maintained status quo mandatory.

In addition to being expeditious and simple, using the current industry recommendations rather than attempting to develop new common basic standards was rational. In doing so, the EU not only admitted but attempted to mitigate its total lack of experience in aviation security. By using the knowledge of others as the base on which to develop its efforts, the EU was able to fulfil its aim of establishing EU common basic standards on aviation security. This was achieved with the passing of Regulation (EC) No 2320/2002.

It was shown in Chapter **5** that a historical weakness of aviation security is considered to be that the international organisations are unable to ensure the necessary standards due to lacking the power to enforce implementation at the national level. By including common basic standards in legislation with which the Member States are required to comply, the EU thus theoretically countered this weakness. The reality is, however, that no legislation is self implementing. In order to achieve a common basic standard, the EU must ensure that implementation occurs. The spill-over from aviation security evidenced by the second aspect of the two-part focus of Regulation (EC) No 2320/2002, compliance monitoring, further demonstrates the potential strength of the EU as an actor in aviation security.

As previously shown, due to the lack of experience, the EU sourced the subject matter of its initial efforts in aviation security from the Member States and the relevant international organisations. This was through the using of ECAC's Doc 30 for the common basic standards laid down in Regulation (EC) No 2320/2002. Further to this, the EU also based significant aspects of its approach on those of its antecedents. These are: the requirement that a single organisation be designated as the appropriate authority, the focus on compliance monitoring, and the allowance for Member States to derogate from the policy in tailoring aviation security to their particular needs by going above and beyond the common basic standards. These have all previously been tried and have proven beneficial for the international regulation of aviation security.

Regulation (EC) No 2320/2002 passes control of aviation security from the national level to the Community level. It does not however negate the role of the Member State. Given the EU's standing in aviation security in December 2002, it was dependant on the Member States for their equipment, personnel and to represent it as an actor in the established international system. The most notable aspect of Regulation (EC) No 2320/2002 is the ramifications the wording of it has on the scope of EU involvement in aviation security. Whilst the EU claimed that its involvement in aviation security was concerned with civil aviation, under Regulation (EC) No 2320/2002, this is actually not the case. The legislation states that it does

not, in any way, cover general aviation, except for the requirement of physical separation from commercial aviation. The extent of the coverage of EU efforts in aviation security are, therefore, limited to commercial aviation not civil aviation.

Regulation (EC) No 2320/2002 verifies a number of arguments previously presented by this thesis. The first is that the inter-connected global nature of aviation means that security in any particular state can be affected by that of third countries. As such, successful management of aviation, especially security requires cooperation between all states – hence the creation of forums such as ICAO. Also the requirement for the Member States to establish a single appropriate authority responsible for implementing aviation security affirms the need for a clear and simple regulatory structure. In addition, the autonomy provided by Regulation (EC) No 2320/2002 to the appropriate authority for NASPs supports the argument that aviation security legislation should be a structure for the analysis of compliance monitoring and a theoretical framework for practical measures.

As Chapter **5** showed, SaRPs are useless if not implemented. Common basic standards are also useless if they are not implementable. Successful regulating of aviation security requires knowledge of the subject derived from experience in the field. As Chapter **6** showed, prior to 9/11, the EU had no experience in aviation security, and was therefore reliant on the Member States. Whilst the EU's approach of utilising the experience of others – the existing ECAC standards – as the basis of its initial efforts is understandable, the mishandling of them as the substance of legislation was far from laudable. Doc 30 was designed as a set of recommendations and thus written so, it was not intended for verbatim reproduction in an Annex to a legislative demand for action. As a result, upon implementation, it became clear that there were a number of issues with Regulation (EC) No 2320/2002. This further supports the assertion that aviation security policy should be written - or at least reviewed (with the option of making changes) prior to passing - by those with operational experience of the subject.

In order to combat the issues resulting from its rushed drafting, it was necessary to amend Regulation (EC) No 2320/2002. Regulation (EC) No 849/2004 makes a point of stating that it does not seek to change the scope of Regulation (EC) No 2320/2002 but rather make technical amendments. This suggests the EU is attempting to fix problems without acknowledging them – that it lacks the strength to admit the weakness of its policies. The disordered and contradictory nature of the content of Regulation (EC) No 849/2004 suggests an internal power struggle. It both increases and decreases the decision-making power afforded to Member States. Therefore upon examination, Regulation (EC) No 849/2004 shows evidence of both build-up and also spill-back.

As is shown throughout this chapter - Regulation (EC) No 2320/2002 was fraught with problems resulting from it being drafted too quickly by those without the appropriate experience. The non-binding recommendations contained within ECAC's Doc 30 did not work as legislation and, therefore, implementation was severely problematic. Regulation (EC) No 2320/2002, highlighted both the importance of successful implementation and the gap between policy and practice as previously argued. As such, it was necessary for the EU to learn the lessons of its mistakes and redraft its aviation security policy. Regulation (EC) No 2320/2002 was subsequently repealed and replaced by Regulation (EC) No 300/2008.

7-4--Regulation (EC) No 622/2003 and associated legislation.

The purpose of Regulation (EC) No 622/2003 is to provide 'the necessary measures for the implementation and technical adaption of common basic standards regarding aviation security' (OJ L 89, 5.4.2003: 9), which are to form the basis of Member States' NASPs. With the passing of Regulation (EC) No 622/2003 the EU moved from simply legislating measures to legislating exactly how those measures should be implemented. Due to this vertical spill-over from standards to implementation procedures, Regulation (EC) No 622/2003 is considered to be a key piece of legislation. Regulation (EC) No 622/2003 places a high value on the

sensitive nature of the subject of aviation security. As a result, all the specific measures it contains are laid down in an Annex which is not published. This does not however mean there is nothing of use that one can gleam from it.

One notable point of Regulation (EC) No 622/2003 is the importance it places on the divergent level of threat among Member States. Paragraph 3 of the preamble states that 'it is necessary to permit a distinction between airports in light of a local risk assessment' (OJ L 89, 5.4.2003: 9). In keeping with previous legislation in the event of such derogations, the Member State is required to inform the Commission should it consider any of its airports to be at a lesser risk. In addition to the differing threat, Regulation (EC) No 622/2003 also acknowledges the point made in Chapter **5** – that the different aspects of aviation require different aviation security measures. Regulation (EC) No 622/2003 allows this on the proviso that all alternative measures are such as to provide an equivalent level of security and that the Commission be informed of these.

The first amendment to Regulation (EC) No 622/2003 was Regulation (EC) No 68/2004.[13] Regulation (EC) No 68/2004 is concerned with prohibited articles and thus was the predecessor to Regulation (EC) No 849/2004. The aim of Regulation (EC) No 68/2004 is to produce a harmonised list of prohibited articles carried by passengers, both those carried into restricted areas including onboard an aircraft and also those carried in hold baggage. Regulation (EC) No 68/2004 considers it appropriate that these lists should be made available to the public before check-in. Regulation (EC) No 68/2004 continues the theme of Regulation (EC) No 622/2003 of tailoring policy to the threat. It states 'such a list can never be exhaustive. The appropriate authority, therefore, should be permitted to prohibit other articles in addition to those listed' (OJ L 10, 16.1.2004: 14).

Another issue considered in Regulation (EC) No 68/2004 represents a vertical spill-over from passengers to staff (including crew). It is concerned with staff, including

[13] Commission Regulation (EC) No 68/2004 of 15 January 2004 amending Commission Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.

flight crew, entering SRA of airports and onboard aircraft. As such Regulation (EC) No 68/2004 calls for harmonised rules governing staff carrying items which they need for the purposes of their job that are prohibited articles for passengers. One aspect of Regulation (EC) No 68/2004 is that it shows how the EU is having to develop aviation security legislation as implementation issues occur. This strengthens the argument regarding the importance of experience when producing workable policies on aviation security.

Regulation (EC) No 68/2004 further highlights an issue discovered when considering Regulation (EC) No 622/2003. This is the issue of secrecy. Paragraph (2) of the preamble states, '[i]n accordance with Regulation 2320/2002 and in order to prevent unlawful acts, the measures laid down in Annex to Regulation (EC) No 622/2003 should be secret and should not be published. The same rule necessarily applies to any act' (OJ L 10, 16.1.2004: 14). This provides a considerable challenge when analysing the next piece of policy, that of Regulation (EC) No 781/2005.[14] All of the measures contained in Regulation (EC) No 781/2005 are set out in the Annex and thus unobtainable. All that can be deduced about the content is the statement in the preamble of '[t]here is a need for measures giving precision to the common basic standards' (OJ L 131, 25.5.2005: 24). This also holds true for Regulation (EC) No 857/2005.[15]

The subsequent amendment, Commission Regulation (EC) No 65/2006,[16] thankfully breaks the pattern established by the previous two. It is concerned with limited time period trials testing new technical methods or processes. Under Regulation (EC) No 65/2006, Member States may trial a new technical method or process in place of one of those listed in the Annex to Regulation (EC) No 622/2003. The trial must be for the 'purpose of evaluating a new way of performing the security control concerned' (OJ L 11, 17.1.2006: 4). It is repeatedly stressed in the Regulation that it

[14] Commission Regulation (EC) No 781/2005 of 24 May 2005 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.
[15] Commission Regulation (EC) No 857/2005 of 6 June 2005 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.
[16] Commission Regulation (EC) No 65/2006 of 13 January 2006 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.

is paramount that the trial must not jeopardise overall levels of security. The Regulation states that the Member State must first obtain permission from the Commission to undertake the trial and the communication required by the Commission from the Member State during the trial.

Regulation (EC) No 65/2006 further justifies two key points made by this thesis. The first is the need for aviation security to be proactive rather than reactive, which requires it to be constantly evolving new best practices. The second is the need for an allowance for Member States to go above and beyond basic standards by implementing different measures and/or technologies. In addition, Regulation (EC) No 65/2006 demonstrates further spill-over from aviation security in practice to aviation security research. Commission Regulation (EC) No 240/2006[17] is of the same vein as both Regulation (EC) No 781/2005 and Regulation (EC) No 857/2005. The measures it contains are secret and the only information given is the 'need for measures giving greater precision to the common basic standards' (OJ L 40, 11.2.2006: 40).

The next amendment to Regulation (EC) No 622/2003 is Regulation (EC) No 831/2006.[18] As with the previous pieces of legislation considered in this section, the exact amendments are secret and thus not published. It can however be ascertained from the preamble what the legislation is regarding. Regulation (EC) No 831/2006 is concerned with the security measures applied to cargo, courier and express parcels. The criteria for regulated agents was set out in point 6.2 of the Annex to Regulation (EC) No 2320/2002. Under Regulation (EC) No 831/2006, this is amended to include the condition that the appropriate authority, 'should consider to take into account the relevant information provided by the customs authority when designating, approving or listing an agent as a regulated agent' (OJ L 150, 3.6.2006: 4). One important point regarding Regulation (EC) No 831/2006 is that it supports verbatim a main philosophy of this thesis when it states 'the content of

[17] Commission Regulation (EC) No 240/2006 of 10 February 2006 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.

[18] Commission Regulation (EC) No 831/2006 of 2 June 2006 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.

Regulation (EC) No 622/2003 should be revised in the light of experience gained' (OJ L 150, 3.6.2006: 4).

Commission Regulation (EC) No 1448/2006[19] again states in the preamble that the 'common basic standards should be made more precise' (OJ L 271, 30.9.2006: 31). Unlike its predecessor, Regulation (EC) No 1448/2006, alludes to how this should be done in the preamble with reference to EDS. Under Regulation (EC) No 1448/2006 certain criteria must be applied to EDS technologies in place across Member States. Ensuring the performance requirements of all EDS equipment in use meets the required standards is to be the first step in harmonising technical specifications. This reiterates how the EU is moving from general standards to specific technical measures to be implemented.

Commission Regulation (EC) No 1546/2006[20] is the first instance since Regulation (EC) No 2320/2002 of the EU producing legislation in direct response to an instance of terrorism. Regulation (EC) No 1546/2006 is the result of the focusing event that was the foiled liquids plot. It is a continuation of the theme shown in Regulation (EC) No 781/2005, Regulation (EC) No 857/2005 and Regulation (EC) No 240/2006 by calling for more precise measures. Regulation (EC) No 1546/2006 however specifies in which area it calls for more precision, which is the screening of LAGs to detect liquid explosives. Whilst this is reactionary - which as Chapter **5** showed is a major criticism of aviation security, the legislation can also be considered to be proactive. This is through the stated requirement that these measures are to be reviewed on a six monthly basis 'in the light of technical developments, operational implications at airports and the impact on passengers' (OJ L 286, 17.10.2006: 6). Regulation (EC) No 1546/2006 is also the first time EU legislation on aviation security considered the effect of the policy on passengers to be a going concern. Whilst this is the first time the spill-over from aviation security to facilitation is

[19] Commission Regulation (EC) No 1448/2006 of 29 September 2006 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.

[20] Commission Regulation (EC) No 1546/2006 of 4 October 2006 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.

acknowledged in the actual legislation, section **7-6** shows facilitation to have occurred prior to Regulation (EC) No 1546/2006. Regulation (EC) No 1546/2006 also maintains continuity through the legislation by stating that Member States are to ensure passengers are clearly informed of what items they may no longer carry, as was the case with Regulation (EC) No 68/2004.

Regulation (EC) No 1862/2006[21] is similar to that of Regulation (EC) No 1448/2006. It is concerned with measures designed to ensure greater precision of the common basic standards with regards to a specific technology. This is WTMD equipment. The Regulation lays down the performance requirements for WTMD. Again, the setting of performance requirements is considered to be the first step towards harmonising technical specifications. As such, Regulation (EC) No 1862/2006 can be taken as a demonstration of vertical spill-over. Integration in the wider field of civil aviation security has led to further integration in specific sub-areas.

Commission Regulation (EC) No 437/2007,[22] in accordance with the classification of the Annex to Regulation (EC) No 622/2003, states all measures it contains in a secret, unpublished Annex. It can however be ascertained that Regulation (EC) No 437/2007 builds on one of the themes demonstrated in Regulation (EC) No 1546/2006. The preamble to Regulation (EC) No 437/2007 states the 'measures provided for by Regulation (EC) No 622/2003 should be reviewed in the light of their operational implications at airports and their impact on passengers' (OJ L 104, 21.4.2007: 16).

Commission Regulation (EC) No 915/2007[23] is concerned with the measures in place regarding the carriage of LAGs. Regulation (EC) No 915/2007 requires the measures 'restricting liquids carried by passengers arriving on flights from third countries and transferring at Community airports' to be reviewed (OJ L 200, 1.8.2007: 3). This is

[21] Commission Regulation (EC) No 1862/2006 of 15 December 2006 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.
[22] Commission Regulation (EC) No 437/2007 of 20 April 2007 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.
[23] Commission Regulation (EC) No 915/2007 of 31 July 2007 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.

because the restrictions in place have been found to 'create certain operational difficulties at these airports and cause inconvenience to the passengers concerned' (OJ L 200, 1.8.2007: 3). As such, Regulation (EC) No 915/2007 calls for the restrictions applied to the carriage of LAGs by transferring passengers under Regulation (EC) No 1546/2006 to be reviewed and new measures applied until such time as there is sufficient development in screening technologies to resolve the issue.

Commission Regulation (EC) No 1477/2007[24] is a direct continuation of Regulation (EC) No 915/2007. Regulation (EC) No 1477/2007 was passed in light of a review of security standards in a third country and that country's history of cooperation with the Community and Member States. It states 'the Commission has decided to take steps to alleviate the problems identified above, in the case of passengers carrying liquids obtained at that airport' (OJ L 329, 14.12.2007: 22). This means that the carriage of LAGs originating from the particular third country, which is classified, and thus not specified outside of the secret Annex, is now considered under Regulation (EC) No 1546/2006 not Regulation (EC) 915/2007. By exempting a particular country from the Regulation governing third countries and instead applying the Regulation governing Member States, the EU is introducing a new level of cooperation and mutual recognition with third countries. This echoes the Memoranda of Cooperation between Member States method favoured by ICAO and other relevant organisations. This suggests the EU has realised that given the globally inter-connected nature of aviation, a successful approach to aviation security ought to be more inter-governmental than supranational, as argued in Chapter **5**.

Commission Regulation (EC) No 23/2008[25] is also concerned with increasing the precision of the common basic standards. Regulation (EC) No 23/2008 does this by

[24] Commission Regulation (EC) No 1477/2007 of 13 December 2007 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.

[25] Commission Regulation (EC) No 23/2008 of 11 January 2008 amending Commission Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security.

way of setting performance requirements for Threat Image Projection (TIP). TIP should be used to improve the quality of screening of 'both cabin bags and hold bags, by means of projecting virtual images of threat articles into an x-ray image of a bag' (OJ L 9, 12.1.2008: 12). Regulation (EC) No 23/2008 lays down the following criteria for the use of TIP. First, TIP should have both minimum and maximum percentages of images to be projected onto screening images. Second, when the screener responds to the image, the system should inform them of the presence of a TIP image and whether or not they correctly identified it. The third specific point made in Regulation (EC) No 23/2008 is that the library of TIP images should be updated and expanded on a regular basis, again acknowledging the changing nature of the threat.

As with the majority of legislation relating to Regulation (EC) No 622/2003, Regulation (EC) No 23/2008 maintains the need for secrecy stating 'the performance requirements of security equipment, including TIP, at airports should not be placed in the public domain as it could potentially be misused to circumvent security controls' (OJ L 9, 12.1.2008: 12). Unlike previous legislation pertaining to performance requirements of aviation security measures and technologies, Regulation (EC) No 23/2008 does, however, acknowledge that the information regarding TIP performance requirements may need to be distributed to those other than Member States. It specifically states that such information should 'be made available to regulators and equipment manufacturers' (OJ L 9, 12.1.2008: 12). Regulation (EC) No 23/2008 is the first instance of legislation regarding performance requirements specifically stating certain parties are exempted from the secrecy requirement. This is a necessary development the EU needed to make, and shows the EU is now more aware of the importance of the relationship between policy-makers and the industry as illustrated in Chapter **5**.

Regulation (EC) No 622/2003 was drafted and passed to amend Regulation (EC) No 2320/2002. This was as a result of the problems encountered upon implementation of Regulation (EC) No 2320/2002 due to the inexperience of the legislators and the speed with which it came to be. With Regulation (EC) No 622/2003, the EU began

legislating the exact measures through which the common basic standards should be implemented. This presents a catch-22 situation: dealing in specifics requires experience – which the EU does not have, by legislating specifics the EU reduces the autonomy afforded to Member States – who do have the necessary experience. This is proven true by the failings of Regulation (EC) No 622/2003 as can be seen from the number of times it was necessary to amend it and the reasons for this. Only one amendment was the response to a focusing event as a result of threat development. The rest, thirteen in a four year period, were all concerned with correcting the shortcomings of the previous policies. Regulation (EC) No 622/2003 does, however, make a positive contribution to EU aviation security: it demonstrates the strength of the EU's counter-terrorism experience and how this is being used to inform aviation security policy.

Many of the amendments to Regulation (EC) No 622/2003 specifically: Regulation (EC) No 68/2004; Regulation (EC) No 781/2005; Regulation (EC) No 857/2005; and Regulation (EC) No 240/2006 - present the same problem. This is that the measures they consist of are contained in an Annex which is considered secret and, therefore, not published. The first amendment to Regulation (EC) No 622/2003 highlights an ongoing issue with the regulation of aviation security: that of harmonisation. Due to the differing threat levels and the allowance for Member States to increase standards within their own territories, in practice the EU can only achieve harmony on a base level and not completely. Furthermore, Regulation (EC) No 68/2004 attempts to address the issue that the prohibitive policies are too sweeping in their nature – the generalisations they contain cause operational implications.

One of the many amendments to Regulation (EC) No 622/2003, that of Regulation (EC) No 65/2006, shows that the EU is committed to having an aviation security strategy of maintaining and even increasing effectiveness through technical evolution. The Regulation acknowledges that it is the Member States proposing and conducting the trials, therefore, it is the Member States themselves who are leading the evolution.

The amendment of Regulation (EC) No 1448/2006 is concerned with making the common basic standards more precise with regard to EDS. With such precision, the EU appears to be moving beyond its intention of establishing common basic standards towards instilling specific rules to be adhered to. This is further substantiated by Regulation (EC) No 1862/2006, which is concerned with harmonising technical specifications of WTMD again representing vertical spill-over. Another Regulation which is concerned with increasing the precision of the standards is that of Regulation (EC) No 23/2008 through setting performance requirements for TIP. All three Regulations not only demonstrate the increasing scope of EU aviation security policy but suggest an aim of executive control. Regulation (EC) No 23/2008, therefore, suggests that the EU is determined to establish the Commission as a supranational policy entrepreneur in what is in practice an inter-governmental field.

Regulation (EC) No 1546/2006 was the first post-9/11 legislation produced as a direct response to a focusing event. This is, however, not necessarily a weakness, as can be seen from the requirement it contains that measures be regularly reviewed. The foreseeing of possible problems and attempting to mitigate them is the exact opposite of one of the biggest historical weaknesses of aviation security. Unfortunately Regulation (EC) No 1546/2006 was again an immediate reaction and as such the measures contained within it did cause problems. Regulation (EC) No 915/2007 contained the requirement that the LAGs restrictions on third countries to be reviewed in order to mitigate the detrimental effect on facilitation. As a result, Regulation (EC) No 1477/2007 was passed. The Regulation marks a new level of cooperation and mutual recognition with third countries for EU aviation security. It supports the argument that a successful approach to aviation security should be more inter-governmental than supranational. This does not however negate the strength of the Commission as a supranational policy entrepreneur as Regulation (EC) No 1477/2007 demonstrates the EU's ability to affect aviation security standards outside the borders of the Member States.

Regulation (EC) No 831/2006 expands the depth of EU aviation security through the inclusion of measures relating to cargo on passenger aircraft. The Regulation shows that the EU understands the kinetic nature of aviation security. In addition it also highlights one of the main points of view presented by the author – that of the importance of experience. This is through the statement that the legislation ought to be updated to include the lessons the EU learns as it gains experience. The Regulation also demonstrates characteristics of the EU's approach that suggest the ability to be a competent actor in aviation security. This is the importance of intelligence and given the inter-connected nature of aviation, cooperation between agencies. Regulation (EC) No 23/2008 takes this one step further through the requirement that specific information needs to be shared with those other than the Member States. This acknowledgement that aviation security is more than just governments, airports and air carriers, and thus of the necessary relationship between policy-makers and the industry makes the vital connection between policy and practice.

7-5--Other noteworthy pieces of legislation.

The first noteworthy piece of legislation this section considers is that of Commission Regulation (EC) No 1217/2003. Article 5(3) of Regulation (EC) No 2320/2002 required Member States to develop and implement a civil aviation security NQCP. Regulation (EC) No 1217/2003 was designed to ensure harmonisation in this across Member States in order to allow for successful monitoring at the Community level. The objective of Regulation (EC) No 1217/2003 is to provide a common specification for the NQCPs of Member States, including 'establishing common requirements for NQCPs, a common methodology for the audits to be undertaken and common requirements for the auditors' (OJ L 169, 8.7.2003: 1). In Article 3, Regulation (EC) No 1217/2003 states that, in order to ensure the effectiveness of NASPs, Member States should ensure the appropriate authority is provided with enforcement powers. The importance of this has already been mentioned both in Chapter **5** and also earlier in this chapter. The EU's acknowledgement of it, however, shows wisdom beyond its experience. It also affirms the role of the

Member State, the EU may legislate standards but it is up to the Member States to ensure the implementation of them.

NQCPs are required to cover the structure of the compliance monitoring system, the role of auditors, the types of monitoring activities to be used including the frequency of them, reporting systems at both the national and Community levels, and processes for correcting non-compliance. More specific requirements are made in certain areas. Audits are to be both announced and unannounced. All audits are to use a certain classification system to assess compliance which is provided in an Annex to the Regulation. Each Member State is required to ensure they have a sufficient number of auditors available who have the specified levels of knowledge and experience. Again this shows that the EU places a high value on experience, which supports the argument of this thesis that aviation security is a field which can only be successfully managed by those who have experience in it.

The next noteworthy piece of legislation considered is that of Commission Regulation (EC) No 1486/2003. Regulation (EC) No 1486/2003 is concerned with the issue of monitoring compliance with the legislated common basic standards at the level of both the individual airport and the Member State. This is to be done through Commission inspections of aviation security standards at airports in Member States, all of which are to be conducted in accordance with a common methodology. As such, Regulation (EC) No 1486/2003 further demonstrates the strength of the Commission as a supranational policy entrepreneur in aviation security. The stated purpose of which is to 'verify effectiveness of national civil aviation security quality control programmes' (OJ L 213, 23.8.2003: 3). The Commission will co-ordinate with the relevant inter-governmental organisations over the timing and location of inspections, in order to avoid duplication so as to maximise effectiveness. This chapter has shown the importance of harmonising and ensuring the success of NQCPs. It is for this reason that Regulation (EC) No 1486/2003 is considered to be a noteworthy piece of legislation. The Regulation places considerable emphasis on the necessity of cooperation between the Member State and the Commission and outlines their respective roles.

Regulation (EC) No 1486/2003 demonstrates an additional vertical spill-over. Initial policy simply stated that compliance with the Regulations was to be monitored. By setting out in such detail how this compliance monitoring is to be actualised; time-frames, methodologies and the qualifications required for inspectors, there has been further vertical spill-over from the general field of civil aviation security to the specific area of auditing security standards at airports.

A form of cooperation required from the Member State is to provide qualified inspectors who meet the Commission's criteria as specified in the Regulation, in order to assist the Commission to conduct inspections. The Regulation states that inspectors are only to conduct inspections in other Member States not their own in order to ensure impartiality. Further highlighting of the importance of practical experience and thus the importance of the Member State, demonstrates continued wisdom on the part of the EU.

Another policy which is considered to be a noteworthy piece is Commission Regulation (EC) No 1138/2004. Expressed simply the critical parts (CP) are those areas of an airport, which, after the screening process has occurred, departing passengers have access to, and baggage passes through or is held. Under the terms of the Regulation this definition is only valid for those airports of such a size that have forty or more staff with identification cards. The Regulation justifies this by stating in the case of 'airports where very few staff have access to SRA, a balance should be struck between the need to ensure effective security and the need to ensure operational effectiveness' (OJ L 221, 22.6.2004: 6). For those airports with less than forty staff holding security passes, the definition of the CP of a SRA is determined by the national appropriate authority. By empowering the Member State in this manner, the EU is once again demonstrating its understanding of both the complexities of aviation security and the importance of experience.

The Regulation requires a number of access control provisions for the CP to be enacted within a particular time frame. Within nineteen months of the Regulation

entering into force, all staff and items carried must be screened before gaining entry to any areas which departing passengers have access to after the screening process. The Regulation also requires that within twenty-five months, staff must be screened before being allowed entry to areas where departing baggage passes through or is kept after having been screened. The deadlines attached to the requirements demonstrates that the EU acknowledges the disparity amongst the airports to which the Regulation applies. It also indicates that the early lessons associated with implementing Regulation (EC) No 2320/2002 are being learnt quickly and are a consideration when creating new policies.

There is one exemption to this requirement concerning departing baggage: if staff handling baggage are not screened, then by the same date, appropriate measures must be taken to ensure that baggage cannot be tampered with. In addition, the Regulation contains provisions for allowing staff to enter the CP without undergoing screening. Unscreened staff must have a screened and authorised member of staff as an escort at all times. In addition if screened staff have left the CP only temporarily and were under constant observation sufficient to ensure they cannot have obtained prohibited articles, then they may be granted re-entry without needed to be rescreened. Furthermore the Regulation states that the CP does not need to be constantly maintained, however if it is not then prior to it being re-established the procedures for a breach of security must be enacted. The breach procedure is: in the event that unscreened persons have had possible access to the CP then a full security search of the area must be carried out to ensure the absence of prohibited articles. This further shows the commitment of the EU to balance security requirements against operational implications thus increasing the effectiveness of the policy.

Regulation (EC) No 1217/2003 is concerned with harmonising NASPs to aid equal and successful compliance monitoring at the Community level. No legislation is self enacting, the EU common basic standards are dependent on the Member States implementing them. Audits are to be conducted by personnel from the Member States further highlighting the importance of experience. The Regulation highlights

the importance afforded to appropriate authorities on the subject of implementation and thus the role of the Member States. Regulation (EC) No 1217/2003 pertained to Regulation (EC) No 2320/2002 and so was repealed by Regulation (EC) No 300/2008.

Regulation (EC) No 1486/2003 is a direct companion to Regulation (EC) No 1217/2003. It is concerned with the inspection side of compliance monitoring representing another vertical spill-over. The Regulation reaffirms that Commission inspections will be conducted according to a common methodology by qualified personnel from other Member States. Again, the Regulation places significant emphasis on the necessity of the Member States and the EU establishing strong cooperation. Under Regulation (EC) No 1486/2003, the Commission will inspect and report any inadequacies but defer to the Member States on how these are to be rectified, further illustrating the respective roles within the relationship.

Regulation (EC) No 1138/2004 is concerned with a fundamental aspect of aviation security, that of the physical separation of arriving and departing passengers. It acknowledges the operational implications that may result from one size fits all policies and sets the criteria for the decision to be under the purview of the Member State. Furthermore the Regulation acknowledges potential problems and includes procedures to fix them, demonstrating the positive attribute of a proactive approach.

7-6--Initial efforts from the perspectives of policy-makers and practitioners.

The information obtained from interviewing policy-makers regarding Regulation (EC) No 2320/2002 and the associated legislation highlighted a number of issues. These can be categorised as follows: problems associated with Regulation (EC) No 2320/2002, harmonisation of standards, compliance monitoring, facilitation, relations with the industry, and whether EU aviation security is reactive or proactive.

One interviewee provided an explanation for Regulation (EC) No 2320/2002, that it had to be enacted without delay to stop terrorists from trying to repeat 9/11 in Europe, the EU, therefore, had to make Doc 30 binding (INT11, 2011). This further supports the dual analysis previously made in this thesis of the reasons for both EU involvement in aviation security and the content of the initial policy produced on the subject. As has already been widely acknowledged, things moved very quickly as a result of 9/11. This thesis has argued that this was in fact too quick - the review of Regulation (EC) No 2320/2002 has shown it to be fraught with problems upon implementation requiring the dearth of amending legislation. This is supported by the view amongst experienced policy-makers that Regulation (EC) No 2320/2002 should not have been legislation, but a directive to leave more room for national procedures (INT2, 2011; INT7, 2011; INT13, 2011; INT16, 2011). This is supported by another interviewee who acknowledged that Regulation (EC) No 2320/2002 was produced so quickly there were many mistakes and omissions and that this was why in the revision in 2004 the EU fully involved all stakeholders (INT3, 2011). This chapter has considered both the potential reasons and resulting benefits to security from restricting access to specific information on security, as well as the need for transparency of legislation which has such significant impact on citizens. One interviewee attributes this aspect of initial legislative efforts to the fact that, due to inexperience in aviation security at the beginning, the EU was incredibly cautious hence the frequent use of the cloak of secrecy (INT7, 2011).

Whilst the EU's early legislative efforts on aviation security were not without their shortcomings, they were also not without value. The issue of the added value of EU involvement in aviation security was a prevalent one during the fieldwork. One interviewee stated that they were genuinely convinced that security would be lower without EU involvement (INT2, 2011). This opinion was supported by many other interviewees, all of whom considered the main benefit of EU involvement to be that of harmonisation. Prior to involvement at the Community level not all EU Member States had comparable levels of security and oversight. Had ICAO carried out audits of security prior to 9/11 (these didn't happen until after) it would have observed a

significant difference of standards (INT1, 2011). The EU introduced common basic standards and applied them uniformly across all the Member States, this has increased conformity of Annex 17 across twenty-seven countries within Europe (INT3, 2011). Many interviewees agreed that one of the primary effects of EU involvement is that is has resulted in a more level playing field – not just across the twenty-seven Member States but also the three EEA States (INT1, 2011; INT2, 2011; INT3, 2011; INT7, 2011; INT9, 2011; INT10, 2011; INT11, 2011; INT12, 2011; INT15, 2011; INT21, 2011). Before 9/11, there were different levels of coverage and security due to the difference among national perceived threat levels.

A further effect of EU involvement in aviation security is the development of one-stop security. This vertical spill-over also demonstrates the importance of the Commission's ability to act as a supranational policy entrepreneur. As one interviewee stated, to be able to implement one-stop security, there needed to be rules and procedures in common across the Schengen area (which includes all EU except UK & the Republic of Ireland), otherwise the benefit to passengers and airports would not be achievable (INT9, 2011).

This chapter has previously showed that the vertical spill-over from legislating common standards to compliance monitoring is the primary effect of EU involvement in aviation security. Furthermore, it demonstrates the strength of the EU as an actor in aviation security. This argument is supported by the data obtained during the fieldwork. At the EU level, the Commission's programme is one hundred percent complimentary to the system. There is one body responsible for compliance for airports, carriers and operators, which is the Member States. It is not the Commission's role to check operators, this is the responsibility of Member States. The Commission's role is to check the compliance of Member States. This is done by inspecting airports and airlines to check if Member States oversight is effective. This is very effective. Member States individually have restraints in terms of resources, budget and conflicts of interest that the EU does not have. The EU can force Member States to comply, launching infringement processes which are procedures that subject the Member State to political pressure and so far has meant that states

have complied. One interviewee stated that this is why ICAO rated the EU system so highly, and that this is something that would not have happened without the EU Member States acting together, showing yet another benefit to EU involvement (INT3, 2011).

This thesis has already noted that another important effect of EU involvement in aviation security was the spill-over into facilitation. It can be argued that facilitation is, in fact, the driving force behind EU aviation security efforts as the measures contained within the various policies are designed to first and foremost protect both passengers, aircraft, and airport property and personnel (Int6, 2011). Facilitation, however, not only provides significant impetus but also considerable impediment. A substantial portion of the problems associated with regulating aviation security result from the issue of trying to balance passengers' personal comfort with security (INT8, 2011). The EU's focus on harmonising standards is attributed to not only to ensure a certain level of security to but also to reduce the imposition on the passenger (INT2, 2011). The information gained through interview clearly shows that, whilst all institutions agree on the importance of the passenger in terms of aviation security, there is not necessarily a consensus on exactly why this is so. For the Council, and moreover the EP, the passenger is very important for political reasons (INT8, 2011). Public opinion can have direct consequences both in terms of the public image of a political office and who is selected to hold it. This thesis has demonstrated the role of the Commission as a supranational policy entrepreneur in aviation security. Furthermore, it was shown in both the previous chapter and earlier in this chapter that the Commission is the premier institution in this area. Even representatives from other institutions recognise the supremacy of the Commission in terms of the political actors involved in EU aviation security. Both the Council and the EP rely on the expertise of the Commission and the knowledge and experience of those in the various specific working groups (INT5, 2011). As the presidency of the Council changes so do the delegates, the longevity of both Council and EP membership is quantified by the length of political terms, thus limiting the extent of continuity. As the staff of the

Commission are not political appointees, succession of office does not present the same issues.

Chapter **5** showed the importance of practical experience in the regulation of aviation security and as a result of this Chapter **6** examined the issue of the relationship between policy-makers and practitioners in EU aviation security. During the fieldwork, all of the policy-makers interviewed agreed that the involvement of the industry in the policy-making process is vital if the legislation produced is to be effective. It is necessary for policy-makers to talk to; the technical experts about what can be done, the industry regarding what they need, and to the Member States as they are the ones who implement. One interviewee illustrated the delicacy of balancing the needs and interest of all parties involved. If the compromise impacts too much on the economy or operations or too little on security then it must be changed (INT3, 2011). Another interviewee stated this is why the EU has always used committees of both Member States and industry to develop rules, noting that whilst the industry cannot be in the room for voting (as it has to remain confidential) otherwise they are fully involved (INT7, 2011).

It has been argued that another reason for the urgency behind Regulation (EC) No 2320/2002 is due to the nature of aviation security. That is it is event-driven, and reactive. This is politically typical as security measures cost money, they increase passenger discomfort, and impact the facilitation of operations - it is hard to get acceptance of them without a clear threat (INT3, 2011). The fact that no successful acts of terrorism against aviation occurred within the EU during the period of 2001 to 2006 resulted in complacency. The industry were attempting to push for the scrapping of measures they thought were not necessary. Without events occurring showing a definite need for security, people are not happy with security. The thesis has already showed that it is very hard to be proactive in aviation security as you never know what the next threat might be and so it is very important to manage the response. Again, this is evidence of value added by EU involvement. This is supported by the statement by one interviewee that it is far easier for the EU to effectively manage a response than Member States, resulting in a coordinated

response of twenty-seven countries rather than numerous different over-reactions (INT3, 2011).

7-7--Application of legislation.

This section is primarily concerned with the issue raised in Chapter **5** of this thesis – that of the gap between policy and practice. This thesis has previously stated that no legislation is self-executing and that any policy can only then be as strong as the implementation of it. As a political entity the EU's role is inevitably one whose primary function is that of a policy-maker. In order to ascertain whether or not the EU achieved its aim of ensuring common basic standards, this section is concerned with the real world application of EU legislation on aviation security. It must be reiterated at this point that the thesis is concerned with the role of the EU as an actor in aviation security and not an in-depth review of the practical state of aviation security within the borders of the EU's territory.

7-7.1--Contribution of inspection reports.

It has been shown in section **7-3** that EU involvement in legislating aviation security caused the spill-over to compliance monitoring. Regulation (EC) No 2320/2002 required that the Commission produce an annual report regarding the implementation of the common basic standards, a requirement which was maintained in Regulation (EC) 300/2008. It is, therefore, logical that these reports would form the basis of an evaluation of the implementation of EU aviation security policy. This is further strengthened by the fact that the reports are considered to present 'the situation in the Community as far as aviation security is concerned' (European Commission, 2005a: 3), which has been determined through the process of physical inspections. It has already been established that Regulation (EC) No 1486/2003 was deemed to be a notable piece of legislation as it is key to the EU's ability to determine if Member States are correctly implementing the legislated common basic standards. The fact that the Regulation legislates the procedures for

the Commission's conducting and reporting of inspections does to a degree validate the credibility of the implementation reports, and thus strengthens the argument for their use in the analysis of the effects of EU involvement in aviation security. Whilst the inspections in any Member State were conducted by Commission staff who were assisted by qualified personnel drawn from amongst the various other Member States in order to protect against national favouritism and prejudice, this does not, however, guarantee the absence of bias in the reports. The reports which are written by Commission officials are in essence evaluating the success of the Commission as an actor in aviation security.

Furthermore, each annual report is to be based on 'drawing conclusions from the inspection reports' (European Commission, 2005a: 3). This raises two different concerns. The first is that the inspection reports on which the annual report is based are not themselves available in the public domain. Due to the lack of a mechanism for independent validation of the findings of the Commission's inspections, it is impossible to ascertain the factual accuracy of the initial inspection reports. The second is that a singular report produced by drawing conclusions from a number of unpublished documents allows for significant interpretive license. Aside from the issues abounding from the recorded security situation being based on a series of generalisations, one must question given the absence of accountability, the possibility of authors being self-effacing rather than self-promoting. It must, however, be acknowledged that, as is even admitted within the text of the first report, there is a total absence of records regarding the actual level of security prior to the creation of Regulation (EC) No 2320/2002 in either Member States or at specific airports. As there is no basis for comparison, it is not possible to accurately determine just what effect EU involvement has had on civil aviation security standards. Whilst the inspection reports are, therefore, of limited use they are undeniably still of value to the evaluation of the EU's role in aviation security. It has previously been mentioned that the EU's role in aviation security is first and foremost that of a policy-maker. It has also been stated that the primary advantage the EU has over the various international organisations in regard to regulating aviation security is the ability to enforce its SaRPs through the mechanism of

legislative power. The inspection reports should then be considered as a depiction of the EU's ability to validate and ensure the compliance of Member States with the mandated requirements, in short its strength as a political actor in the field.

7-7.2--Inspections of the implementation of Regulation (EC) No 2320/2002.

The first report on the implementation of Regulation (EC) No 2320/2002 was produced in September 2005 and is concerned with the results of the Commission's initial inspections conducted at Community airports and national appropriate authorities. The forty-three inspections that form the basis of the first report were conducted over a period of eighteen months from February 2004 to June 2005. This initial round of inspections began with inspections being carried out in all of the fifteen original EU Member States during 2004 and by the time they concluded, inspections had been conducted in twenty-three Member States. Of the twenty-three Member States covered in the first report, only fourteen national appropriate authorities had been inspected as the majority of the initial inspections were concerned with airports. A total of twenty-nine inspections were conducted covering the entire range of EU airports as measured by passenger throughput, with the emphasis clearly being placed on those with the highest volumes of traffic. This suggests that the EU acknowledges the importance of bridging the gap between policy and practice, and moreover that the EU considers the 'on the ground reality', the practical level of security within EU borders, to be a more pressing concern than the strength of the Member States regulation and control of policy obligations. Furthermore, there were also three inspections which were conducted at airports that are mainly concerned with freight, thus demonstrating the EU's acknowledgement of the issue of general aviation.

Under Regulation (EC) No 2320/2002, the national appropriate authorities were required to implement NASPs which were to include: airport and air carrier security programmes, training programmes and NQCPs, which were covered in more detail in Regulation (EC) No 1217/2003. The first report concludes that NASPs had been implemented in all inspected Member States and were mostly consistent with the requirements, though it was deemed that some Member States could be more fully

compliant. The progress on NQCPs was judged to be less satisfactory with the implementation powers of the appropriate authority of one Member State being considered as a result of the inspections to be insufficiently established. Furthermore, two Member States were found, as a result of the inspections, to not have established such a programme which resulted in infringement proceedings. This demonstrates the primary strength of the EU as an actor in aviation security by highlighting the difference between it and the various international organisations as shown in Chapter **5** – that of the power to enforce standards.

The general findings of the Commission inspections regarding the implementation of these programmes by the national appropriate authorities highlighted both positives and negatives. A key conclusion is the lack of uniformity – that there is a notable variance in compliance. This lack of homogenisation is not limited solely to carriers, but was also found to be prevalent amongst the various airports inspected. The report details how this was addressed, namely through both rectification procedures and also the drafting and passing of implementation legislation as seen in the previous chapter.

It was found in section **7-3** that Regulation (EC) No 2320/2002 contained a strong focus on quality control mechanisms, and that subsequent legislation was passed that was solely concerned with this issue. Regulation (EC) No 1217/2003 is evidentiary proof of further vertical spill-over resulting from EU involvement in legislating common standards in aviation security. It is, therefore, unsurprising that the first report on the implementation of Regulation (EC) No 2320/2002 pays considerable attention to this issue. A general finding of the report is that it would be beneficial for all air transport operators to develop internal quality control mechanisms to allow them to measure both their own performance in terms of level of security but also compliance with EU standards.

The previous chapter also noted that the secrecy applied to Regulations concerning aviation security measures was one of the biggest impairments to reviewing the policy output. In the case of policies amending Regulation (EC) No 622/2003, there

were a number of Regulations that gave no more information than the 'need for measures giving greater precision to the common basic standards' (OJ L 40, 11.2.2006: 40). Two of these were Regulation (EC) No 781/2005 and Regulation (EC) No 857/2005. It can be ascertained from the content of the Commission's first report on the implementation of the common basic standards that these refer to performance standards for x-ray machines and procedures for hand searching of passengers respectively. Moreover, the report intimates that both Regulations were enacted as a result of deficiencies identified as a result of the Commission's inspections. This shows that the results of inspections and the subsequent analysis of these is being used to influence policy, causing further vertical spill-overs.

The report also further illustrates what the EU perceives the role of the Member State to be – an issue that has featured prominently in this chapter. The Commission has, as a result of the inspections conducted, notified the Member State of the deficiencies found and will conduct follow-up inspections to confirm rectification. A failure in this will lead to the Commission executing its powers to initiate infringement action. It is, however, the prerogative of the Member State to determine how the deficiencies are to be rectified. This suggests that the EU views its role as one of regulation and oversight, and the design and control of implementation to be the role of the Member States. This is further substantiated by the respective responsibilities as laid out in the report. Aviation security is the responsibility of Member States – EU legislation is applicable to the Member States and not to individual commercial entities within them i.e. airports. In the instances that the findings of the inspections at particular airports required rectification processes to be enacted it was the national appropriate authority – specifically either its NASP or its NQCP which was deemed responsible. The responsibility of the Member State is to have a national civil aviation programme to ensure the application of the required standards which is to have an internal quality control mechanism to ensure the effectiveness of the programme. It is the responsibility of the EU to set the required standards and to ensure that Member States are compliant.

The point made in section **7-7.1** concerning the absence of data regarding the exact level of security in EU Member States prior to 9/11, therefore, clearly undermines the validity of a statement made in the executive summary of the first report. This is that 'the level of security at the airports of the EU has been considerably enhanced through the implementation of the common rules' (European Commission, 2005a: 2). The finding that the implementation of EU common basic standards and the quality control actions resulting from Regulation (EC) No 2320/2002 have aided harmonisation and increased the efforts of the Member States is, however, valid. The general conclusions also notes that one of the greatest benefits of EU involvement in civil aviation security is the aspect of the legal system 'to ensure proper enforcement rules' (European Commission, 2005a: 9) – this supports the argument made in Chapter **5** of this thesis that the most significant weakness of civil aviation security prior to 9/11 was the lack of enforcement power of the controlling and regulating organisations. This in turn supports the argument made throughout Chapters **6, 7** and **8** – that the ability to enforce its standards through the existing legal framework is the EU's primary asset in terms of its strength as an actor in aviation security. Furthermore, it also demonstrates another advantage of EU involvement – that, due to the relative difference in economic and technical development of their Member States and thus the requirement to set common basic standards at the LCD, the EU is able to set standards higher than those contained in Article 17. The report, in fact, draws 'the conclusion that the quality of aviation security in the EU is standard-setting in a global context' (European Commission, 2005a: 9). This is, however, to be expected, as it was shown in Chapter **5** that a number of EU Member States were considered to be the leading names in security amongst the ICAO Contracting States. It does however demonstrate an unexpected development – the strength of the Commission as a supranational policy entrepreneur.

There are noticeable similarities between the EU's legislating and inspecting of aviation security, the primary one being the demonstration of the argument made in Chapter **5** of this thesis – the importance of experience. As Chapter **6** showed, prior to 9/11 the EU had no direct involvement in civil aviation security. Until the EU

began legislating this area it had no firsthand experience of the implementation of aviation security. The report acknowledges that as the Commission's first foray into conducting inspections into this field, there are a number of lessons to be learnt.

The second report on the implementation of Regulation (EC) No 2320/2002 on civil aviation security was produced two years later. It covers the period from July 2005 to December 2006 and is based on the results of forty-seven inspections carried out. Eleven of the forty-seven were concerned with national appropriate authorities and the other thirty-six with individual airports. During those inspections each Member State was subject to at least one inspection concerning the level of compliance within its territory, either as one of the ten national appropriate authorities inspected or through the inspection of the twenty-three individual airports. A noticeable improvement in the extent of the inspections between those conducted from February 2004 to June 2005 and those from July 2005 to December 2006 can be seen with regards to the issue of evaluating Member States governance of aviation security. As was noted earlier in this section, the inspections on which the first report was based did not cover all of the national appropriate authorities. This meant that it was not possible for the Commission to present a true depiction of the level of compliance with Regulation (EC) No 2320/2002 common across the whole of the EU. As a result of this the conclusions and findings of the report were only truly valid across a section of the Member States and thus when applied to the EU as a whole could only accurately be considered generalisations.

By the time the second report was produced the compliance of the national appropriate authorities of all of the then twenty-five Member States had been inspected. This correcting of the earlier failure has provided the necessary data for the comprehensive analysis required to obtain a truly rounded evaluation. Furthermore, it bears significant resemblance to the process through which EU policy concerning aviation security has developed as was shown repeatedly throughout the previous chapter. Chapter **5** considered the subject of the relationship between policy and practice and highlighted the importance of their

correlation with one another. It was noted in the consideration of the previous report that the EU acknowledged the importance of this issue. That the EU demonstrates the same habits in the implementation of policy as it has in creating said policy, continues to illustrate its strength as an actor in aviation security. Whilst the ability of all the Member States to fulfil their quality control obligations had been assessed by the end of the second round of inspections, the ten inspections of the national appropriate authorities were of the ten new Member States. This meant that the situation remained where only fourteen of the national appropriate authorities of the original fifteen EU Member States had actually been inspected. Similarly, whilst the level of compliance within the territory of each Member State had been determined, during the period of July 2005 to December 2006 inspections had only been carried out in twenty-four of the twenty-five Member States. This discrepancy in figures is due to the case of Luxembourg. No inspections were carried out in Luxembourg during the second round, the reason for the missing inspection of the compliance of the national appropriate authority is that it was found to have 'no national quality control programme; infringement proceedings has [sic] therefore been initiated' (European Commission, 2007: 3). This further demonstrates the primary strength of the EU as an actor in aviation security: it has the ability to ensure implementation by way of enforcing Member States' compliance with its policies through its legal framework.

The second report not only illustrates the effects of EU cooperation on aviation security within the territories of the Member States, but also outside the borders of the EU. This international perspective is provided by the inclusion in the report of the case of Switzerland. The report mentions a bilateral EU-Switzerland agreement granting the Commission powers to conduct inspections in Switzerland. This further demonstrates the Commission's ability to act as a supranational policy entrepreneur in aviation security by having a quantifiable effect on standards outside of the EU. The report shows that these powers were exercised with the inspection of one Swiss airport being carried out during the period in question.

The second report states that to date the cumulative total number of airport inspections is sixty-five which have occurred at forty-nine different individual airports. This breaks down as twenty-nine inspections across twenty-six airports during phase one, and thirty-six inspections across twenty-three airports during phase two. Airports which were deemed to be sub-standard were subject to follow-up inspections during the same phase to ascertain that the recorded deficiencies had been rectified. Those airports which were considered satisfactory during the first phase were not inspected again – the inspections that comprised the second phase were all conducted at different airports. The second report imitates the first to provide an accurate depiction of the ability of Member States to enact the required standards, which is determined through assessing the implementation at various airports across the EU. There is, however, no function within either of the reports for judging the Member States ability to maintain standards as there has not been any subsequent inspection at airports once they have been deemed compliant. Furthermore, the second report makes a point of equating the total number of airports inspected to date (forty-nine) to approximately ten percent of all EU airports which have commercial traffic stating that there are roughly five hundred of which. This differs considerably from the extent of the scope of Commission inspections of airports as described in the first report which was concerned with the roughly seven hundred civil aviation airports that Regulation (EC) No 2320/2002 is applicable to. As can be seen from section **7-5**, Regulation (EC) No 622/2003 contained both the reasons why and conditions for, instances where Regulation (EC) No 2320/2002 may not be considered to apply to an airport within the territories of EU Member States. The acknowledgment of the altered type and thus reduced number of airports to be inspected as a result of this, demonstrates the EU's commitment to ensuring the inspections pertain directly to the legislation and incorporate any necessary amendments. This further highlights the approach of continuous improvement that has been shown in earlier sections, again illustrating similarities between the EU's approach to both policy and practice.

Whilst its predecessor contained mainly positive conclusions on the success of implementation, albeit with the acknowledgement of some negative aspects, the

second report is considerably less favourable. The prominent positive findings are that overall national control programmes are deemed satisfactory. It is, however, noted that there is still considerable room for improvement. The most notable failing of compliance with regulatory obligations is the continuation of deficits highlighted by the first report.

On the subject of the actual level of security in the EU, the second report is much more positive. This is attributed to the fact that the requirements of the legislation are much higher than ICAO's SaRPs – reinforcing the point made in Chapter **5** concerning the weaknesses of the international organisations as a result of their large and diverse memberships. The report, however, goes on acknowledge that the level of security is not standard – that there are substantial inconsistencies to be found amongst the different airports. Furthermore, it is stated in the report that the differing level of security resulting from this lack of uniformity means 'Europe is therefore not totally protected against threats' (European Commission, 2007: 5). This suggests that the variation is not as a result of Member States availing themselves of their right to put in place measures above and beyond those they are legally obliged to under Regulation (EC) No 2320/2002 and the various amendments to it. Rather that this difference is due to some airports and thus Member States failing to adhere to the requirements.

The report states that statistically cases of non-compliance are both less frequent and less severe than they were previously. This is, however, not as positive as it would appear. The report continues on to acknowledge that there are still recurring deficiencies across the majority of the remit of Regulation (EC) No 2320/2002. The areas in which deficiencies are deemed to be 'of minor or average seriousness' constitute the most fundamental aspects of airport security: physical security and the screening of passengers (European Commission, 2007: 5). Those areas in which the deficiencies were considered more serious are the searching of aircraft, the screening of luggage and security measures concerning staff. This presents an even more damning picture, as these major deficiencies are occurring in the areas that have repeatedly been shown to be key vulnerabilities most notably exploited by the

perpetrators of the Air India Kanishka and Lockerbie attacks and the Philippine Airlines incident. This inability to protect against repeats of previous attacks by having the necessary measures in place to prevent the use of such established methods of unlawful interference is not the case at all EU airports. It does, however, compromise the level of aviation security throughout the EU and even beyond its borders due to the global and interconnected nature of aviation as was examined in Chapter **5**. As such, where these failings occur, the level of security present is not simply grossly insufficient but instead of preventing against threats rather constitutes one.

After illustrating the situation regarding the existence of deficiencies, the report then turns its attention to the rectification of them. The conclusions drawn are that the rectification process is not satisfactory, the addressing of deficiencies in insufficient and too slow. In general, the level of compliance amongst these Member States is unsatisfactory. The report reiterates that in cases of extreme non-compliance, the EU can enact infringement proceedings against Member States as it has done in the case of Finland and Luxemburg. This is further evidence of the strength the EU has over others involved in regulating aviation security – that of the power to enforce.

It was argued earlier in this section that the EU's inspecting compliance with aviation security policy shares numerous similarities with its legislating of it. This is most apparent when considering the causes of development. This thesis has repeatedly shown throughout the examination of the EU's policy output that many developments have occurred as a result of the identification of failings. The second report on implementation makes record of this. It is noted that the inspections highlighted the need for further harmonisation, specifically in the technical area of security equipment. The report states that, as a result of this, a further two Regulations have been produced: Regulation (EC) No 1448/2006 and Regulation (EC) No 1862/2006. Again, this demonstrates that the scope of EU efforts in aviation security is primarily due to vertical spill-over occurring as a result of legislating

common standards. This further proves the importance of experience and moreover the problems which can result from the lack of it.

One interesting aspect of the report is that it does not simply concern itself with results of the inspections concerning the level of compliance amongst Member States and thus the level of security within the EU. A wider purview is demonstrated by the consideration of the current threat to aviation security and therefore perceived issues for future protection. This forward thinking attitude is in direct contrast to the historical tendencies of aviation security regulators as was seen from Chapter **5**. This innovative approach is evidenced in the report through the consideration of the issue of liquid explosives resulting from the focusing event of the terrorist plot which was foiled during the inspection period. Another notable issue is the requirement that the measures implemented in this area be reviewed in light of the effect on passengers and the operational impact for airports. This is further evidence of how involvement in aviation security has caused further spill-over – namely into the area of facilitation. The report finishes by stating that facilitation could be improved if the EU could affect aviation security outside of its borders through bilateral agreements with 'like-minded third countries with equivalent high standards of security' (European Commission, 2007: 9).

The third Report on the implementation of Regulation (EC) No 2320/2002 was published in September 2008. The third report differs from the first and second by way of its structure. They concentrated on the level of compliance among Member States and thus the level of security across the EU with focus on the results of the inspections with regulatory developments featuring only to underpin these findings. Where it did occur, only cursory mention was paid to the subject of the future efforts of the regulatory process, and, very little was said regarding the content of this. The third report is in two parts, the first is concerned with the results of the inspections during the period mentioned. The second part, however, is concerned with the policy process itself.

The first part of the report is concerned with the inspections carried out by the Commission during the period of January to December 2007. Of which there were twenty-eight which can be broken down into ten concerned with the compliance of the national appropriate authorities of Member States and eighteen focused on the implementation at specific airports. Eight of the eighteen airport inspections were follow-up inspections to observe the rectification of deficiencies found during the initial inspection. The second report stated that, with the exception of follow-up inspections, all of the initial airport inspections conducting during phases one and two occurred at different airports. Unfortunately, the third report does not acknowledge whether or not the ten initial inspections conducted during 2007 were different airports again, or if they included any of the previous forty-nine. Given the aforementioned issue regarding the inspection reports themselves not being published it is not possible to obtain independent verification or rebuttal of this. A tendency which is common across all the reports is to focus on the cumulative totals when on the subject of airport inspections. As such, the third report states that over the history of the inspections the Commission has inspected seventeen of the twenty largest EU airports, those with an annual passenger volume of close to or exceeding twenty million. This prioritisation is explained as resulting from the selection of which airports are to be inspected being conducted on a risk assessment basis. Aside from the eighty-five percent of the largest EU airports, the inspection process has achieved a coverage level of approximately ten percent. The report does make the point that inspections have also covered some of the smallest airports in the EU to which Regulation (EC) No 2320/2002 applies. This range of airports evaluated therefore can be considered more telling than the lack of clarity concerning the inspection histories of the ten airports inspected during 2007. This means that the conclusions drawn by the Commission can, with a reasonable degree of reliability, be considered to be representative of the situation across the entire EU network.

These findings are, primarily, that security standards among the EU are generally high, resulting from a significant increase in the level of compliance. Whilst the report acknowledges that there are still deficiencies, it counters this with the

position that 'the assessments are being made against some of the most stringent standards in the world' (European Commission, 2008: 6). The report also makes a point of stating that not only has the amount of deficiencies decreased, but also their seriousness. The Commission has found that there has been improved results across the core areas of aviation security including, physical airport security and the screening of passengers and baggage, but that there are still significant weaknesses. A notable facet of the report is the inclusion of reasons for these weaknesses, which then forms the basis for the report's suggestions for amending and improving the policy in part two. This approach of applying lessons learnt to facilitate improvement is further demonstration of not just the benefit of experience but the necessity of it in such an area as aviation security.

Another aspect of the inspections at airports, which did not feature in earlier reports, is the inclusion of a section concerning Member States' self-evaluations. Further to the requirement of Regulation (EC) No 2320/2002 that the Commission provide an annual report on the implementation of aviation security standards within its borders, Regulation (EC) No 1217/2003 requires the same of the individual Member States. The reports are concerned with the results and findings of the national compliance monitoring programme during the previous year. The third report on the implementation of Regulation (EC) No 2320/2002 states that these reports are generally more favourable than is wholly accurate – the level of compliance shown in them can be significantly higher than that the Commission has found during the inspections. Interestingly, the report does not attribute this to self-promotion by the individual Member States, but rather suggests it may be a matter of perception – the Member State may believe it is adequately enforcing the requirements but does not have the advantage of the Commission of examples for comparison.

The way in which the third report differs from the first two regarding the Commission's inspections of EU airports, is not only in terms of the level of detail about the airports inspected. There is also a noticeable change in the extent to which the findings are presented. This should not be taken to mean that the third

report is less substantial than either of its predecessors, rather it expresses the same information in a more concise manner in order to concentrate more on other aspects. A greater level of consideration is given to the inspections of the national appropriate authorities. During 2007, these inspections included the appropriate authorities of ten Member States. The third report is the first of its kind to detail the methods by which these inspections were conducted, which was through the triangulation of documentary analysis, interviews and on-site verification. This on-site verification, which was conducted at an airport implementing the national measures is a new addition to the inspection process. Prior to 2007, the assessment of appropriate authorities did not have a practical evaluation of the measures, implementation was assessed based on inspections at airports. This only provided a true assessment in those cases where there was an inspection at an airport in that Member State during the same phase as the inspection of the national authority. As the Commission is restricted by both time and available personnel, this was not always possible. The introduction of a verification visit to a national airport as part of the inspection of the appropriate authority therefore allows for a more complete inspection and increases the roundness and thus validity of the Commission's findings.

The report states that the over-arching findings of these inspections are that Member States are compliant with the EU's requirements in terms of national policy. Furthermore, that whilst implementation is occurring, it is at the basic level and could therefore the effectiveness of it could be improved. Therefore the Commission needs to take a stronger position in order to ensure that its observation of areas for improvement are also acted upon, rather than just the deficiencies recorded. An issue relating to staff is that of the Commission's finding that many of the Member States do not have enough personnel dedicated to compliance monitoring to cover 'all airports and all Chapters of the legislation with a frequency sufficient to ensure the swift detection and rectification of deficiencies' (European Commission, 2008: 5). The counter-point to this is the statement in the report that, as a result of the findings of Commission inspections, some Member States have increased both the resources allocated to aviation security and the

number of national inspectors. This tangible effect of the inspection results demonstrates in a clearly measurable way an aspect of the positive impact of the EU's inspections on the implementation of Regulation (EC) No 2320/2002. By undertaking first-hand involvement in ensuring the implementation of the Regulations, the Commission has caused a greater prioritisation of aviation security amongst the Member States and thus can be said to have increased the level of aviation security across the EU.

It is clearly noticeable that the main focus of the Commission's third report on the implementation of Regulation (EC) No 2320/2002 is the second part – the consideration of the policy process itself. This section is concerned with the necessary amendments to the legislation concerning aviation security and also to the policy process. The recommendations for these amendments have resulted from what has been determined necessary from the Commission's analysis of the findings of the inspections, not just during 2007 but also those the earlier reports on the implementation of Regulation (EC) No 2320/2002 were based on. This thesis has repeatedly shown the importance of experience in the field of aviation security. Through the examination of the numerous amendments to Regulation (EC) No 2320/2002, it has been demonstrated how the EU's lack of experience in aviation security negatively affected the success of its initial legislative efforts. It can be seen from the third report on the implementation of Regulation (EC) No 2320/2002 that these amendments are also proving problematic for all those involved in implementing EU common standards on aviation security, not just the Member States, but the industry as well. The first of these difficulties is concerning the written nature of the policy documents. The legislation has been found to be unclear with the requirements detailed within being over-onerous. Due to this, the Commission has found that the legislation is viewed as not appearing to have considered operational requirements sufficiently. This thesis has shown this to be especially true in the case of Regulation (EC) No 2320/2002. The Commission's third report on the implementation of Regulation (EC) No 2320/2002, however, suggests that this is the case with the various amending Regulations also.

The content of the legislation on aviation security has also given rise to another difficulty. This is concerning the technical aspect of the Regulations and the lack of standardisation in this area. Another prominent difficulty concerns the variations between requirements Member States are to adhere to. These are the differences between the Community requirements and those required by third countries. A prominent example is the Transport Security Administration (TSA) requirements for airports with flights to the US. Also, Member States own requirements vary, further impacting on the level of harmony present across the Community. A frequent criticism present in previous reports on the implementation of Regulation (EC) No 2320/2002 is concerned with the lack of resources allocated by Member States to quality control measures, specifically the conducting of national audits. The third report acknowledges that a potential explanation for this is the 'excessive demand on Member States arising from **duplication of requirements**[emphasis in original], especially in relation to different inspection regimes' (European Commission, 2008: 10).[26] The third report on the implementation of Regulation (EC) No 2320/2002 then outlines the regulatory developments that occurred during 2007. The third report on the implementation of Regulation (EC) No 2320/2002 also states that, in terms of the action undertaken during 2007 to address these difficulties, the focus was on improving facilitation without compromising security. The commitment to this fundamental approach demonstrates yet again how the EU is overcoming its primary weakness, that of inexperience, and is promoting itself as a relevant actor in aviation security.

7-8--Conclusion

This chapter was concerned with identifying the achievements of the EU in the field of aviation security. The findings of this consideration have been evaluated against a two-point criteria. Firstly, whether the EU has achieved the aim of its involvement. Secondly the measure of success of the EU in aviation security in general.

[26] These are ICAO and TSA in addition to the EU.

The previous chapter found that the EU acted as a supranational policy entrepreneur in seizing the policy window resulting from the focusing event that was 9/11, in order to become involved in aviation security. In considering the development of the initial involvement, the previous chapter also determined that EU integration in the area of aviation security resulted from a dual spill-over from both counter-terrorism and the wider remit of aviation. Chapter **6** therefore determined that it was directly as a result of 9/11 that the EU became involved in aviation security. As such the period for evaluation was decided as the first decade of involvement, beginning on 11 September 2001. This evaluation was conducted based on the policy output, EU inspections into aviation security and the views of policy-makers and practitioners.

The previous chapter also determined what the aim of the EU's involvement was. The purpose of the expansion of EU counter-terrorism to include aviation security was a direct response to the perceived need for legislation. The point of this legislation was to ensure that in matters of aviation security, Member States conformed to a single set of rules. The intention of the EU's involvement was to establish EU common basic standards on aviation security. Chapter **5** established that common basic standards are the criteria that must be met to ensure adequate aviation security that are wholly and equally applicable to all those under the purview of the entity which sets them. The establishment of EU common basic standards therefore requires the EU to put in place standards that allow for a sufficiently high level of security to protect aviation and ensure they are enacted and maintained across all EU Member States. In order to ascertain whether or not the EU achieved its aim, the case study needed to determine three things. First, the establishment of a criteria for aviation security by the EU. Second, if this criteria is sufficient to safeguard aviation against acts of unlawful interference. Third, and perhaps most important, the extent to which said criteria is truly applicable.

The passing of Regulation (EC) No 2320/2002 established the EU common basic standards on aviation security. This consisted of the current recommendations, based on knowledge and experience, of those with a strong reputation in aviation

security. Such a criteria was internationally recognised and approved as a sufficient level of security. The prior existence of this criteria, and its origins as ECAC's Doc 30, does not, however, lessen the achievement of the legislation. Through Regulation (EC) No 2320/2002 the EU did what those before it could not – make the common basic standards legally binding and thus ensure all the Member States were required to enact them to their full extent. The inclusion of compliance monitoring in Regulation (EC) No 2320/2002 allowed the EU to enforce the implementation of the common basic standards. It can therefore be determined that the EU did succeed in achieving the aim of its involvement in aviation security by way of the creation of common basic standards. With the passing of Regulation (EC) No 622/2003, and subsequent legislation amending and replacing it, the EU moved beyond this. Rather than just set the common basic standards, the EU expanded into legislating the measures for the implementation of the common basic standards.

The legislation considered in this chapter demonstrates many positives regarding the EU's ability as an actor in aviation security. Right from the outset the EU's involvement on aviation security has been underpinned by a strong focus on compliance monitoring. This thesis has already looked at the implications of the fact that no legislation is self-enacting and the importance of implementation. By including compliance monitoring in Regulation (EC) No 2320/2002, the EU ensured the implementation of the common basic standards. This is something which its antecedents have always been unable to do, thus countering one of the biggest obstacles to successful international regulation of aviation security. Whilst common basic standards are by their very nature the necessary measures, wherever they have existed so has the right to derogate from them - the allowance to go over and above. This is not simply to prevent the infringement of sovereignty. Moreover, this is due to the necessity for security measures to vary in accordance with the differing nature of the threat which tends to be specific to a particular locale.

Unfortunately, the review of the policy output does not just show strengths but also weaknesses. A clearly visible shortcoming of the initial EU policy on aviation security

is a direct result of its lack of experience in the field. Most notably this can be seen from the implementation problems associated with Regulation (EC) No 2320/2002 due to the verbatim reproduction of a document written as a set of recommendations as opposed to requirements.

8--Improvement & development of EU efforts in aviation security.

8-1--Introduction.

The previous chapter was concerned with the initial legislation the EU produced on aviation security. This chapter is concerned with the development and improvement of EU involvement in aviation security. The first topic area is concerned with the legislation produced. The second topic area is concerned with the implementation of said legislation. The subsequent evaluation of this was based on information sourced from the inspection reports, supplemented with the commentary of polity officials, obtained through both official reports and interviews conducted regarding both the politics and policy of EU aviation security. In order to ensure the chapter maintained a rounded focus, the commentary of policy officials was also supplemented by the views of those outside of EU governmental institutions who are involved in aviation security in the EU.

The research question that this PhD as a whole has attempted to answer is: **To what extent has EU involvement in aviation security occurred as a result of 9/11 and what effects has this had?** The specific research questions this chapter answers are:

1) Was the EU successful in achieving the aim of its involvement in aviation security?
2) What does the policy output on aviation security show the EU to have achieved beyond its initial intention?
3) What are the practical effects of EU involvement in aviation security?
4) How is EU involvement in aviation security perceived?

In order to answer this chapter's first and second specific research questions, SPE was used for the analysis. As with the previous chapter - the content of the first topic area is the direct continuation of the previous chapter. In terms of analysis, the second topic area is concerned with the implementation of EU legislation on aviation security, and provides the answers to the third specific research question. The third topic area of this chapter is concerned with how EU involvement in

aviation security is viewed by those involved in it. For question four to be answered the chapter needed to utilise a combination of all three aspects of the theoretical framework to conduct the analysis.

8-2--Scope of the chapter.

This chapter is concerned with whether or not the EU achieved its intentions regarding its involvement in aviation security. This is in order to answer the fourth sub-question that the thesis's research question consists of. In order to do this it has evaluated the EU's efforts in this area in terms of policy output. In order to be able to assess a body of work sufficiently for conclusions to be drawn regarding merit, achievement and/or progress there must be a framework for the evaluation. Such a framework requires there to be a specific quantifiable aim, which the work in question is the result. Moreover, for any justifiable analysis to be performed, this aim must be known.

In terms of the EU's involvement in aviation security, this aim is known. In the first case study - Chapter **6** - the thesis analysed the origins of the EU's involvement in aviation security including the reasons for and intentions of said involvement. Chapter **6** has shown that in the wake of 9/11, the EU felt the need to expand and strengthen its counter-terrorism efforts by becoming involved in aviation security. The previous chapters have also shown that this spill-over from counter-terrorism occurred as a result of the Commission acting as a supranational policy entrepreneur in response to a focusing event, and was enacted through spill-over from other areas of aviation.

Sub-section **6-3.2** showed that the direct reasoning behind the EU becoming involved was the perceived need for legislative homogenisation of the rules concerning aviation security. Sub-section **6-5.1** has shown the EU's initial intention was to establish a common standard. This case study will not debate the merits of this aim. The thesis has already considered the validity and importance of common

standards (see Chapter **5** and Chapter **6**). It has used this aim of intending to create an EU common standard as the yardstick by which to measure the EU's level of success.

In order to ensure that the thesis is academically sound, it must be able to draw conclusions and present an argument based on these. This required that the analysis be performed not on open-ended information but on data that has a clearly defined end-point. This is especially important when one considers the policy area this thesis is dealing with. Aviation security is a field where new developments do not generally lead to a linear progression of the subject, but more often than not an exponential change (Easterbrook, 2001; Mackenzie, 2010; Wallis, 1993: 2003; Wilkinson, 2007; Wilkinson & Jenkins, 1999). This therefore allows that should an argument be made based on the data available up to the moment, it is likely that it would only remain current for a limited amount of time. In addition without an end-point for the analysis there is the risk that incidents, and more specifically the reactions to these, may occur between submission and evaluation that would at least partially invalidate the thesis.

In terms of the thesis, the end-point is a matter which required much deliberation. Given the infancy of the subject, it is not possible to conduct an examination of a long-range time period, rather one is constrained to a short-term focus. To be able to obtain the necessary information given the sensitive nature of the topic required that the thesis was not concerned with the current situation but rather had a historic perspective. In response to this restriction and thus the limited options, it was decided that the examination of the EU's initial involvement in aviation security should consider a ten year period and so the data range the thesis is concerned with is September 2001 to September 2011.

The key pieces of legislation this chapter covers are: Regulation (EC) No 300/2008;[27] Regulation (EC) No 820/2008;[28] Regulation (EC) No 272/2009[29] and Regulation (EU)

[27] Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002.

No 185/2010.[30] In addition the notable pieces are: Regulation (EU) No 1254/2009;[31] Regulation (EU) No 18/2010[32] and Regulation (EU) No 72/2010.[33] The criteria for key and notable pieces of legislation remains the same as that outlined in the previous chapter.

On paper it would appear that 2008 was a quiet year with only four pieces of legislation being passed. Two of these, however, are key pieces and one of which it is argued later in this chapter is in fact one of the two most important pieces after Regulation (EC) No 2320/2002. 2009 was the year another of the key and notable pieces were passed along with one other piece of legislation. In terms of the quantity of policy output, 2010 was by far the most significant year with eleven pieces of legislation being passed. Amongst these eleven are one key piece and two notable pieces. The final year considered by this chapter was that of 2011, in which three pieces of legislation were passed. None of these, however, are deemed especially noteworthy.

The following table lists all the pieces of legislation covered in this chapter. It provides in chronological order, an overview of each policy listing; the date of acceptance, the subject matter of the policy and the reason for drafting. The Regulations in bold type are the key pieces of legislation and the Regulations in Italics are the notable pieces.

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[28] Commission Regulation (EC) No 820/2008 of 8 August 2008 laying down measures for the implementation of the common basic standards on aviation security.

[29] Commission Regulation (EC) No 272/2009 of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council.

[30] Commission Regulation (EU) No 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security.

[31] Commission Regulation (EU) No 1254/2009 of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures.

[32] Commission Regulation (EU) No 18/2010 of 8 January 2010 amending Regulation (EC) No 300/2008 of the European Parliament and of the Council as far as specifications for national quality control programmes in the field of civil aviation security are concerned.

[33] Commission Regulation (EU) No 72/2010 of 26 January 2010 laying down procedures for conducting Commission inspections in the field of aviation security.

Legislation	Date of Approval	Purpose	Reason for Passing
Regulation (EC) No 300/2008	**11 March 2008**	**Specifying Common Rules**	**Repeals Regulation (EC) No 2320/2002**
Regulation (EC) No 820/2008	**8 August 2008**	**Measures for implementation**	**Replaces Regulation (EC) No 622/2003**
Regulation (EC) No 272/2009	**2 April 2009**	**Common rules**	**Supplements Regulation (EC) No 300/2008 re: LAGs**
Regulation (EU) No 1254/2009	*18 December 2009*	*Detailed measures for implementation*	*Exempts general aviation from Regulation (EC) No 820/2008*
Regulation (EU) No 483/2009	9 June 2009	Measures for implementation	Amends Regulation (EU) No 820/2008
Regulation (EU) No 18/2010	*8 January 2010*	*Specifications for NQCP's*	*Replaces Regulation (EC) No 1217/2003*
Regulation (EU) No 72/2010	*26 January 2010*	*Procedures for Commission inspections*	*Replaces Regulation (EC) No 1486/2003*
Regulation (EU) No 133/2010	4 February 2010	Measures for implementation	Amends Regulation (EU) No 820/2008
Regulation (EU) No 134/2010	9 February 2010	Measures for implementation	Amends Regulation (EU) No 820/2008
Regulation (EU) No 185/2010	**4 March 2010**	**Detailed Measures for implementation**	**Implements Regulation (EU) No 300/2008**
Regulation (EU) No 293/2010	8 April 2010	Measures for implementation	Amends Regulation (EU) No 820/2008
Regulation (EU) No 297/2010	9 April 2010	Supplements common basic standards	Amends Regulation (EC) No 272/2009
Regulation (EU) No 357/2010	23 April 2010	Detailed measures for implementation	Amends Regulation (EU) No 185/2010
Regulation (EU) No 358/2010	23 April 2010	Detailed measures for implementation	Amends Regulation (EU) No 185/2010
Regulation (EU) No 573/2010	30 June 2010	Detailed measures for implementation	Amends Regulation (EU) No 185/2010
Regulation (EU) No 983/2010	3 November 2010	Detailed measures for implementation	Amends Regulation (EU) No 185/2010
Regulation (EU) No 334/2011	7 April 2011	Detailed measures for implementation	Amends Regulation (EU) No 185/2010
Regulation (EU) No 720/2011	22 July 2011	Supplements common basic standards	Supplements Regulation (EC) No 272/2009 re: LAGs
Regulation (EU) No 859/2011	25 August 2011	Detailed measures for implementation	Amends Regulation (EU) No 185/2010

Figure 7 – Chapter 8 Legislation

8-3--Regulation (EC) No 300/2008 and associated legislation.

As with its predecessor, Regulation (EC) No 300/2008 did not come about overnight. Regulation (EC) No 300/2008 began in 2005 with the Proposal for a Regulation of the European Parliament and of the Council on common rules in the field of aviation security. The 9/11 attacks had paved the way for the EU to take control of aviation security at the Community level which was achieved through Regulation (EC) 2320/2002. Time would, however, show the weakness of inexperience. Essentially it became an issue of implementability. As was argued in Chapter **7**, standards and recommendations do not translate directly into successfully implementable legislation simply by changing 'should' and 'may' to 'will' and 'must'. This is supported by the text of the proposal which states:

> Experience gained . . . shows that the swift transformation into legislation of a set of non-binding recommendations developed by the Member States has led, due to the quick drafting and adoption of the Regulation as a response to the events of 11 September 2001, to a number of problems affecting its implementation (European Commission, 2005b: 2).

The preamble to Regulation (EC) No 300/2008 states that EU legislation concerning aviation security 'should be revised in the light of experience gained' (OJ L 97, 9.4.2008: 2). As such, less than five years after it was enacted, Regulation (EC) No 2320/2002 was repealed and replaced by Regulation (EC) No 300/2008. Regulation (EC) No 300/2008 was the result of further vertical spill-over from the EU's initial efforts in aviation security.

Regulation (EC) No 300/2008 achieves the dichotomy of being both very similar and yet very different to Regulation (EC) No 2320/2002. This may be explained by the fact that according to the text of the Proposal the purpose of the new Regulation was to 'clarify, simplify and harmonise further the legal requirements with the aim of enhancing the overall security in civil aviation' (European Commission, 2005b: 2.).

Whilst Regulation (EC) No 300/2008 is meant to improve levels of security by replacing Regulation (EC) No 2320/2002, this does not mean that all the existing rules needed to change. One rule, which is the same under Regulation (EC) No

300/2008 as it was under Regulation (EC) No 2320/2002, is concerned with who within Member States is responsible for 'the coordination and monitoring of the implementation of security standards' (OJ L 97, 9.4.2008: 73). This is that irrespective of how many entities may be involved in aviation security, each Member State is required to designate a single appropriate authority. Regulation (EC) No 300/2008 in line with previous legislation makes allowance for Member States to go over and above the Regulation should the appropriate authority feel more stringent measures are necessary. As with Regulation (EC) No 2320/2002, Regulation (EC) No 300/2008 states that Member States are still required to inform the Commission if more stringent measures are applied and what these measures are. This further demonstrates the roles within the EU-Member State relationship.

Another aspect of Regulation (EC) No 300/2008 that is the same as Regulation (EC) No 2320/2002 is the subject of the primary vertical spill-over resulting from involvement in legislating aviation security standards. This is the area of compliance monitoring. The Regulation maintains that the Commission will continue to conduct unannounced inspections and following such provide the appropriate authority with a report detailing what remedial action if any is necessary. The only difference between the two Regulations is that Regulation (EC) No 2320/2002 was concerned with inspecting airports and air carriers whilst under Regulation (EC) No 300/2008 this is expanded to include all other entities to whom aviation security standards are applicable. As with other alterations, this expansion is a direct result of experience gained.

Another point of Regulation (EC) No 2320/2002, which has been reproduced almost verbatim in Regulation (EC) No 300/2008, is that of the Commission's requirement to produce an annual report. The report, which is to be sent to the EP, the Council and Member States, is to detail the application of Regulation (EC) No 300/2008 and what positive effect it is having on aviation security. This is further assertion of the Commission as a supranational policy entrepreneur – identifying the Commission as the lead institution in EU aviation security whilst acknowledging the need to involve the other institutions. This requirement, that the real-world success of the

legislation be reviewed, regularly acknowledges the difference between policy and practice. This further demonstrates the development of the EU's understanding of aviation security.

Another aspect of the legislation which remains the same, despite the change of Regulation, is that concerning the national programmes each appropriate authority is required to implement. The first is the NASP. This defines the responsibilities of the operators and entities involved in implementing the common basic standards. The second is the NQCP, concerned with compliance monitoring. The development and expansion of aviation security policy under Regulation (EC) No 300/2008, however, can also be seen by considering what the legislation says regarding security programmes. Under Regulation (EC) No 2320/2002 each Member State was required to have as part of its NASP, an airport security programme and an air carrier security programme. These were to be 'appropriate to meet the requirements of its national civil aviation security programme' (OJ L 355, 30.12.2002: 3). Regulation (EC) No 300/2008 does not simply consider these as part of the NASP - but rather as areas of note in their own right.

Not only are airport security programmes and air carrier security programmes considered in Regulation (EC) No 300/2008 but also entity security programmes. This is applicable to every operator involved in aviation security that is not an airport or an airline. All three security programmes are almost exactly the same as one another in nature. Each is required to describe the methods and procedures to be used and to include provisions for quality control and compliance monitoring. The programmes are also required to be submitted to the appropriate authority for approval. The most notable aspect of this is that the Regulation states each party 'shall draw up, apply and maintain' (OJ L 97, 9.4.2008: 78) their respective programmes. This spill-back of allowing the Member States to decide the content of these rather than dictating it to them, shows how the attitude of the EU has changed as it has become more experienced, and the positive development of its role.

The primary concern of Regulation (EC) No 2320/2002 was that 'the protection of the citizen within the European Community should at all times be ensured in civil aviation by preventing acts of unlawful interference' (OJ L 355, 30.12.2002: 1). Over the intervening years between the two Regulations this concern changed to '[i]n order to protect persons and goods within the European Union, acts of unlawful interference with civil aircraft that jeopardise the security of civil aviation should be prevented' (OJ L 97, 9.4.2008: 72). The change of emphasis, from the individual person to the system as a whole in Regulation (EC) No 300/2008, shows the EU recognises the point made in Chapter **2** of this thesis – that civil aviation is not simply a preferred mode of transport for passengers, but a critical part of national infrastructure.

There is also another facet to the expansion of what is covered under protecting the security of civil aviation in Regulation (EC) No 300/2008. This is to be found in the statement regarding the application of the legislation. Regulation (EC) No 300/2008 is to apply not only to airports within Member States where civil aviation occurs, but also to 'operators providing services at such airports and to entities providing goods and/or services to or through such airports' (OJ L 97, 9.4.2008: 72). Regulation (EC) No 2320/2002 on the other hand was simply concerned with airports. Again, this spill-over shows how the EU's understanding of the range and complexity of aviation security has changed since its involvement began, further highlighting the importance of experience.

Furthermore, Regulation (EC) No 2320/2002 made a significant issue over the magnitude, type and frequency of airport operations that determine whether or not the Regulation was applicable to that particular airport. Regulation (EC) No 2320/2002 combined those airports with incredibly low usage or those only servicing small aircraft with general aviation in a specific category to be considered for exemption. In addition, an amendment to Regulation (EC) No 2320/2002, that of Regulation (EC) No 849/2004, was concerned with the exact nature of the exemptions permitted. With Regulation (EC) No 300/2008, the legislation no longer maintains such a pernickety focus. There is no distinction made between general

and commercial aviation only civil and military. Civil aviation security is stated as simply that, and therefore the legislation is applicable to all airports where the usage is not solely for military purposes. There is also no specific mention of small airports as defined in Regulation (EC) No 2320/2002, only the statement that 'the size of the aircraft, the nature of the operation and/or the frequency of operations' should be a factor for consideration when allowing derogations from the common basic standards (OJ L 97, 9.4.2008: 73). This is noteworthy for two reasons. First, it shows an awareness of the problems that can occur with implementation as a result of legislation being too specific. Second, it suggests the realisation that what constitutes the right standard of security is dependent on more than simply the level of aviation activities at a particular airport. This further demonstrates the deepening of the EU's understanding of aviation security and, therefore, its ability to play a role in it.

One of the key lessons learnt by the EU as a result of Regulation (EC) No 2320/2002 is the kinetic, almost fluid, nature of aviation security. Specifically how it is wide ranging and ever changing, as well as its dependence on technologies which are continually expanding and developing. This is evidenced by the statement in Regulation (EC) No 300/2008 that EU aviation security policy needs to be more flexible. As such it

> should lay down the basic principles of what has to be done in order to safeguard civil aviation against acts of unlawful interference without going into technical and procedural details of how they are to be implemented (OJ L 97, 9.4.2008: 72).

This is a far cry from the attitude originally adopted under Regulation (EC) No 2320/2002 and furthered by Regulation (EC) 622/2003 and its many amendments. Whilst Regulation (EC) No 300/2008 states the EU will not dictate to Member States how they should go about implementing the common rules and common basic standards it contains, it does, however, state the EU will inspect whether or not these rules and standards have in fact been implemented. By following in the footsteps of ICAO in this manner, the EU is empirically demonstrating what this thesis has shown should be its appropriate role.

As with previous legislation, the specifics of Regulation (EC) No 300/2008 are laid down in an unpublished Annex. Considerable non-specific information is, however, given in the text of the Regulation. This includes the topics covered by the common basic standards as outlined in Article 4. This is in terms of both general and detailed measures for implementation. These include all areas covered under Regulation (EC) No 2320/2002 and more besides. The most notable point of Article 4, however, is the statement '[a]dditional common basic standards not foreseen at entry into force of this Regulation should be added to the Annex' (OJ L 97, 9.4.2008: 75). This acknowledgement shows the evolution in the EU's understanding of aviation security between the passing of the two Regulations. Furthermore, the acknowledgement in Article 4 of the ever changing nature of aviation security provides evidentiary support for the argument that Regulation (EC) No 300/2008 has been shaped by the knowledge the EU has gained since it passed Regulation (EC) No 2320/2002.

Another way the two Regulations differ is with regard to the dissemination of information. Under Regulation (EC) No 2320/2002, it was simply stated that all information should be secret. In contrast, Regulation (EC) No 300/2008 considers only those documents containing sensitive security information should be secret and specifically states 'the Commission shall publish those measures which have a direct impact on passengers' (OJ L 97, 9.4.2008: 79). This is notable for two reasons. First, it shows a continued commitment to facilitation (which originally occurred as a result of spill-over) as part of EU aviation security. Second, this increase in transparency is necessary if aviation security measures are able to be implemented effectively.

Regulation (EC) No 2320/2002 acknowledged the Commission's lack of knowledge and thus stated that it would be assisted by a Committee composed of representatives from Member States. This is the same under Regulation (EC) No 300/2008. Regulation (EC) No 300/2008, however, takes this one step further with Article 17 – Stakeholders' Advisory Group. The Stakeholders' Advisory Group on Aviation Security (SAGAS) is to be 'composed of European representative

organisations engaged in, or directly affected by, aviation security' (OJ L 97, 9.4.2008: 79). This development of explicitly stating the established procedure of seeking advice from the industry and the establishing of official mechanisms through which to do so, shows not only how far the EU has come since Regulation (EC) No 2320/2008, but also a deepening understanding of the role it should play.

As the EU is not a Contracting State of ICAO, under Regulation (EC) No 2320/2002 the EU was dependant on its Member States for liaison with ICAO. This changes further under the scope of the new Regulation. By the time Regulation (EC) No 300/2008 was passed, the EU had a Memorandum of Cooperation with ICAO on the subject of monitoring the compliance of Member States, in order to prevent duplication. This development shows how the EU's lack of a place in the recognised aviation security system has changed over the intervening years between the two policies, further demonstrating the strength of the Commission as a supranational policy entrepreneur.

Regulation (EC) No 300/2008 also gives attention to the issues surrounding third countries. Regulation (EC) No 2320/2002 made the suggestion that the Commission should consider developing a way of assessing if flights from third countries met the required level of security. Regulation (EC) No 300/2008, however, not only gives consideration to the creation of aviation agreements between the Community and third countries whose security standards are equivalent to those of the EU, but also security measures required by third countries which may differ to the common basic standards of the EU. This shows how the EU's attitude to the wider international system has progressed from the arrogance of ignorance to the acceptance and respect of understanding. Furthermore, it demonstrated the Commission's ability to act as a supranational policy entrepreneur outside EU borders.

Another notable aspect of Regulation (EC) No 300/2008 is that, in the preamble, it highlights an issue raised in the previous chapter – that of where aviation security fits in terms of a political competence. This is done with the following statement:

‘consideration should be given to the most effective means of offering assistance following terrorist attacks that have a major impact in the transport field’ (OJ L 97, 9.4.2008: 72). Thus Regulation (EC) No 300/2008, whilst acknowledging that aviation security is a means of countering terrorism, shows it is considered to be first and foremost a transport issue.

Regulation (EC) No 300/2008 was designed to harmonise EU aviation security policy into a clear and simple singular piece of legislation that would improve the level of security. With this as the purpose of Regulation (EC) No 300/3008, the EU concentrated on the necessary – producing an implementable framework to benefit security by making changes where necessary rather than rules for rules sake. As such, Regulation (EC) No 300/2008 is positive proof of the EU learning from experience, demonstrating its potential to be a strong player in aviation security. This is furthered by the introduction of SAGAS. Not only is the EU improving the knowledge and expertise from which it can pull but by including them in the drafting process it is increasing the workability of the policies produced.

There are clear and noticeable differences between the way in which Regulation (EC) No 300/3008 was written and its predecessor. The way that Regulation (EC) No 2320/2002 was written to exclude general aviation meant the scope of EU aviation security was more specifically commercial aviation instead of civil aviation. Regulation (EC) No 300/2008 makes no distinction other than that between civil and military and thus EU aviation security policy actually covers all of civil aviation thereby including general aviation. Furthermore, Regulation (EC) No 300/2008 rewrites what EU aviation security protects from simply people under Regulation (EC) No 2320/2002 to include goods and services. The acknowledging of the importance of the aviation industry and, therefore, the wider implications of aviation security are necessary if the EU is establish itself as a supranational policy entrepreneur in the international system. The inclusion of developing a mechanism to assess both if third countries meet EU standards and standards required by third countries which differ to those of the EU shows the EU’s commitment to being a

supranational policy entrepreneur by having a positive impact on aviation security in general i.e. outside of the Member States.

Regulation (EC) No 300/2008 clarifies a number of aspects of the relationship between, and thus the roles of, the EU and its Member States. Whilst Member States retain the prerogative to go over and above the EU common basic standards, they are required to inform the Commission in real time of the details of and reasons for any derogations. Thus the role the EU is creating for itself is that the EU controls the required baseline for aviation security and oversees Member States' position on or above it. Regulation (EC) No 300/2008 emphasises the view that aviation security standards should be basic principles not details of how they are to be implemented, that policies should read like a guidebook not an instruction manual.

With the expansion of the scope of aviation security under Regulation (EC) No 300/3008, the NASPs Member States are required to draw up and maintain must include entity programmes. Regulation (EC) No 300/2008 places a high emphasis on compliance with the legislation as opposed to adherence to it, as was the case previously. In addition the importance of implementation is further acknowledged through the maintaining of the focus on compliance monitoring. Under Regulation (EC) No 300/3008 the measure of the Commission conducting unannounced inspections within Member States is widened from airports to include all entities involved in aviation security. A key feature of Regulation (EC) No 300/2008 is that the Commission is required to produce an annual report on the positive effect the Regulation is having on aviation security. Such regular evaluation of the real world application of the legislation is vital if policies are to be productive in practice.

Regulation (EC) No 300/2008 shows a significant increase in transparency especially in relation to information regarding those measures that directly affect passengers. This further demonstrates the EU's commitment to facilitation. Facilitation, however, did not appear in Regulation (EC) No 2320/2002, it in fact was not a consideration until Regulation (EC) No 1546/2006. Regulation (EC) No 300/2008,

therefore, provides incontrovertible evidence of the increasing strength of the EU as an actor in aviation security. The spill-over from aviation security to facilitation also further demonstrates the EU's ability to act as a supranational policy entrepreneur.

8-4--Regulation (EC) No 820/2008 and associated legislation.

This section is primarily concerned with the examination of one of the key pieces of legislation: Commission Regulation (EC) No 820/2008. It then also gives consideration to the various policy documents associated with Regulation (EC) No 820/2008 which are: Regulation (EC) No 483/2009;[34] Regulation (EU) No 133/2010;[35] Regulation (EU) No 134/2010[36] and Regulation (EU) No 293/2010.[37]

Expressed simply, Regulation (EC) No 820/2008 is the policy concerned with legislating the implementation of the common basic standards. Regulation (EC) No 820/2008 is the updated version of, and replacement for, Regulation (EC) No 622/2003, and is considered to be a key piece of legislation. The preamble to Regulation (EC) No 820/2008 states that the previous policy legislating the implementation of common basic standards – that of Regulation (EC) No 622/2003, has been amended incredibly frequently since its adoption - on average more than three times a year. Therefore 'in the interests of clarity and rationality it is appropriate to consolidate all amendments in to a new Regulation' (OJ L 221, 19.8.2008: 8). Regulation (EC) No 820/2008 is, therefore, further demonstration of the vertical spill-over from common standards to implementation.

[34] Commission Regulation (EC) No 483/2009 of 9 June 2009 amending Regulation (EC) No 820/2008 laying down measures for the implementation of the common basic standards on aviation security.
[35] Commission Regulation (EU) No 133/2010 of 4 February 2010 amending Regulation (EC) No 820/2008 laying down measures for the implementation of the common basic standards on aviation security.
[36] Commission Regulation (EU) No 134/2010 of 9 February 2010 amending Regulation (EC) No 820/2008 laying down measures for the implementation of the common basic standards on aviation security.
[37] Commission Regulation (EU) No 293/2010 of 8 April 2010 amending Regulation (EC) No 820/2008 laying down measures for the implementation of the common basic standards on aviation security.

One notable aspect of the creation of this new policy is the clear change of view regarding what content of the legislation should or should not be published. As this thesis demonstrated in the previous chapter, the liberal application of secrecy to the various aviation security policies was one of the greatest hindrances to any evaluation of said policy. It was shown in the previous section that the specifics of Regulation (EC) No 300/2008 were contained within an unpublished Annex and thus unobtainable. Under Regulation (EC) No 820/2008, however, many of the measures have upon review been deemed to need not be kept secret and, as such, are therefore now published. It is also for this reason that it is considered to be one of the key pieces. This increase in transparency, which incidentally is not limited to aviation security policy but rather has been applied across the whole remit of EU legislation, has not, however, created an open-book situation. It is still considered essential that certain measures – specifically the searching of aircraft, vehicles within the SRA of airports, passengers and baggage, be kept secret in order to prevent acts of unlawful interference.

Regulation (EC) No 820/2008 continues to follow in the footsteps of previous legislation by acknowledging the varied nature of aviation activities and thus their differing security needs. It allows for a distinction to be made between airports which are considered to be of lesser risk as a result of a local risk assessment and upholds the requirement that the Commission be informed of any such. Regulation (EC) No 820/2008 also allows for implementation measures to differ according to the activities to which they pertain. The prerequisite that any alternative measures enacted must ensure an equivalent level of security and be communicated to the Commission still, however, remains. In fact, notification of the Commission of any divergence is a constant theme throughout Regulation (EC) No 820/2008. One specific aspect to which this applies is in the compensatory measures to ensure the achievement of the security objective in the case of airports where arriving and departing passengers cannot be physically separated. This further strengthens the Commission's position as a supranational policy entrepreneur. Whilst allowing the Member States to increase self-determination of aviation security measures is spill-back, the notification requirement keeps the Commission in an oversight position.

This, therefore, allows it to coordinate aviation security policy across the Member States. Another similarity of Regulation (EC) No 820/2008 to the various policies it replaces is the importance placed on both NASPs and appropriate authorities and thus the role of the Member State. Under Regulation (EC) No 820/2008 the approach to evolving best practices through the use of new technologies, first seen in Regulation (EC) no 65/2006, is cemented, as is evident from the inclusion of the issue of technical trials of new screening methodologies and other aspects of security.

The Annex to Regulation (EC) No 820/2008 generally contains the updated versions of the measures for implementing the common basic standards found in the Annex to Regulation (EC) No 2320/2002. In fact, the two are laid out under the same structure. In addition, there are also measures included in the Annex to Regulation (EC) No 820/2008 which relate to common basic standards that did not appear in Regulation (EC) No 2320/2002. The first of these is the inclusion of 'security procedures for supplies of liquids and tamper-evident bags' under screening of staff, vehicles and items carried. This is concerned with airside sales of LAGs and denotes that provisions need to be in place regarding both LAGs intended for sale, and the sealed tamper-evident bags (STEB) into which they are required to be sealed on purchase. This is in order to ensure their security from whence they are first received airside through to the completion of the sale transaction.

The second measure contained in the Annex to Regulation (EC) No 820/2008 that is a new inclusion comes under screening of passengers. It is concerned with prohibited articles and as such revises Regulation (EC) No 68/2004 and Regulation (EC) No 849/2004. Point 4.1.1.1 of the Annex contains a list of prohibited items separated into six categories: Guns, Firearms and Weapons; Pointed/Edged Weapons and Sharp Objects; Blunt Instruments; Explosives and Flammable Substances, Chemical and Toxic Substances; and Liquids. The Annex also sets out the criteria which must be met for a passenger to be exempted from any of the requirements under point 4.1.1.1. Continuing the aforementioned trend to transparency, the list of prohibited articles is to be made available to passengers

before they check-in. There is, however, the allowance for the appropriate authority to prohibit articles which are not on the list thus acknowledging the differing threat situation amongst the Member States.

Under the category of Liquids the Annex states the criteria for the carriage of LAGs. This is that they must be in containers no larger than one hundred millilitres and must all fit into one transparent re-sealable bag with a capacity of no more than one litre that must be able to close. It also states the situations in which exemptions are permitted. This includes medicines and special dietary requirements so long as the passenger can prove the authenticity of both the substance and the need for it. Also, LAGs in STEBs purchased airside within the last twenty-four hours from an airport either in an EU Member State or which is Community approved. The list of those airports deemed Community approved is contained in an attachment to the Annex and includes: Singapore, Dubrovnik, Rijeka, Pula, Split, Zadar and Zagreb. Most notably, the inclusion of the six Croatian airports raises the interesting issue of the EU's ability to affect aviation security standards outside of its borders. It does not however provide proof of this, rather only a further example of its ability to dictate standards within its own borders - albeit with the added inclusion of foresight. At the time Regulation (EC) No 820/2008 became legislation, Croatia was a candidate country for EU membership in negotiations ahead of accession.

The third area that under Regulation (EC) No 820/2008 is considerably different to it was previously is the measures in place for Potentially Disruptive Passengers. Regulation (EC) No 820/2008 demonstrates again the extent of the vertical spill-over within EU aviation security through the significant expansion on the subject. In Regulation (EC) No 2320/2002 the only mention of the issue is '[s]ecurity provisions shall be developed for potentially disruptive passengers' (OJ L 355, 30.12.2002: 10). Under Regulation (EC) No 820/2008, 'Potentially Disruptive Passengers' are divided into three categories. The first is deportees, who are persons who were either admitted into the Member State or gained entry illegally, who have since been formally ordered by the relevant authorities of the Member State to leave. The second is inadmissible persons which are those persons who are refused entry into

the Member State by the relevant authorities and as such are being sent away. The final category is persons in lawful custody, those being transported by the authorities who are under arrest or have been convicted. Irrespective of which category the potentially disruptive passenger comes under, the measures in place are the same, specifically that the relevant authority inform the air carrier in writing in advance of the transportation. The carrier must share the notification with the pilot in charge of the particular flight. This notification must include: who the person is and why they are being transported; whether or not they will be escorted and if so by whom, along with a risk assessment done by the authorities explaining the reasons for this; what, if any specific seating arrangements are required; and; the nature of any available documentation. The only difference between the three categories is the requirement that persons in lawful custody must always be escorted.

In addition to the expansion regarding potentially disruptive passengers Regulation (EC) No 820/2008 also shows further vertical spill-over into the area of unruly passengers. Regulation (EC) No 820/2008 also states that specific 'security measures shall be introduced for unruly passengers' (OJ L 221, 19.8.2008: 17). The Regulation goes on to classify unruly passengers are those whose behaviour, on-board a civil aircraft whilst the doors are closed, affects the safety or smooth running of the flight. Such dangerous behaviour is grouped into four types of actions. First, threatening, harming or interfering with the crew in such a way that prevents them from doing their job. Second, vandalism or reckless behaviour that damages the aircraft or anything on-board it that affects the safety of the aircraft or those persons aboard it. Third is intentionally communicating false information which is of such a nature that it could affect the safety of the flight. The final type of behaviour that would result in a person being considered an unruly passenger is the refusal to obey instructions given by the crew which affects either the safety or smooth running of operations during the flight.

The inclusion of unruly passengers in Regulation (EC) No 820/2008 is further proof of how the deepening of the EU's understanding has led to the widening of its

legislating of aviation security over the intervening years since Regulation (EC) No 2320/2002 was passed. Whilst Regulation (EC) No 2320/2002 and successive policies considered both airport and airline security, all measures were ground based. With the passing of Regulation (EC) No 820/2008, a further spill-over has occurred with the EU expanding into in-flight security.

The final inclusion in Regulation (EC) No 820/2008 that did not feature in Regulation (EC) No 2320/2002 is yet another result of vertical spill-over. This is that of articles prohibited from hold baggage. These include: explosive devices and components of; gases; flammable liquids; flammable solids and reactive substances; oxidisers and organic peroxides; toxic or infectious substances; radioactive materials; corrosives; and, vehicle parts which have contained fuel. The issue of articles prohibited from hold baggage is almost identical to the issue of prohibited articles relating to passengers and cabin baggage considered earlier in this section. Again, the list of the articles prohibited in hold baggage must be made available to the public. Member States also have the right to prohibit the carriage of an item not on the list contained in point 5.2.3.1 of the Annex to Regulation (EC) No 820/2008. If a Member State chooses to exercise the right to go over and above in this case then they are required to inform passengers of this. This shows how the EU is using experience gained in related areas to inform its actions in new areas.

There are however some areas where no provisions have been made in the new Regulation. These include: Airport Planning Requirements; Access Control for public areas other than terminal areas; Physical Security and Patrols; screening of Diplomats; reconciliation of Hold Baggage; screening of Hold Baggage using EDS and TIP; Mail; Air Carrier Mail and Materials; Air Carrier Catering Stores and Supplies, Air Carrier Cleaning, Stores and Supplies; General Aviation; Training of Staff other than Air Carrier and Airport Security Management; and Guidelines for Equipment. This means that the implementation measures of the common basic standards in these areas remain as they were under Regulation (EC) No 622/2003 and its numerous revisions.

There are four pieces of legislation which pertain directly to Regulation (EC) No 820/2008. The first policy is Commission Regulation (EC) No 483/2009. The second piece of legislation which is to be considered is that of Commission Regulation (EU) No 133/2010. The third amending policy is that of Commission Regulation (EU) No 134/2010. The fourth and final piece of legislation to be examined is Commission Regulation (EU) No 293/2010.

These are all concerned with the restrictions regarding the carriage of LAGs by passengers transferring at Community airports having arrived from third countries. Under Regulation (EC) No 820/2008 only LAGs purchased airside from an EU approved airport within the last twenty-four hours, and placed in a STEB are allowed to travel. The preamble to each successive amending policy acknowledges the operational implications for airports and the impact on passengers caused by the restrictions. This further demonstrates the spill-over into facilitation.

As such, the legislation states that the issue has been reviewed and that certain third countries have been evaluated by the Commission for inclusion on the list of Community approved airports. In order to be included on the list, the third country must have a good record of cooperation with the EU and its Member States, and certain security standards at the airport in question must be deemed satisfactory. Regulation (EC) No 483/2009 therefore amends the list contained in Attachment 1 to the Annex of Regulation (EC) No 820/2008 to include Seoul Incheon and Pusan Gimhae, both in the Republic of Korea. Regulation (EU) No 133/2010 also amends Regulation (EC) No 820/2008 by including numerous Canadian airports on the list of Community approved airports. These are: Calgary International, Edmonton International, Halifax International, Ottawa-Macdonald-Cartier International, Toronto-Lester B. Pearson International, Vancouver International, Winnipeg International, Moncton, Quebec, St. John's, and Whitehorse. Regulation (EU) No 134/2010 amends the list to include all the international airports of the USA. Finally Regulation (EU) No 293/2010 sees the inclusion of Kuala Lumpur International Airport on the list of Community approved airports with regard to the carriage of LAGs by transfer passengers. All four policies are positive proof of the EU's ability to

recognise when the equivalent of its common basic standards are applied outside of the Member States.

Regulation (EC) No 622/2003 was the policy legislating the implementation of the EU's common basic standards. As previously stated Regulation (EC) No 622/2003 was repeatedly amended to mitigate its deficiencies – caused mainly by the failings of the policy, with only one exception. One aim of Regulation (EC) No 300/2008 was the clarification and simplifying of EU aviation security policy. Regulation (EC) No 820/2008 continues in the same vein by stating its aim to be the consolidation of all policies laying down measures for implementing common basic standards into one Regulation. In comparison to the previous legislation on aviation security, most specifically the dearth of policies concerning implementation measures, Regulation (EC) No 820/2008 shows a marked increase in transparency. Measures relating to many aspects of aviation security that under previous regulations were secret are now published in Regulation (EC) No 820/2008. There remains, however, a number of areas in which the measures are kept secret so that knowledge of them cannot be used to circumvent them in order to prevent acts of unlawful interference. This distinction shows that the EU's knowledge and understanding of the specifics of aviation security is continually developing. This is supported by the fact that Regulation (EC) No 820/2008 recommends the approach of evolving best practices through the use of new technologies in order to ensure aviation security is proactive.

Regulation (EC) No 820/2008 acknowledges the complex nature of civil aviation and thus the varied security needs of the different activities. As such significant importance is placed on both Member States NASPs, and the designated appropriate authority, highlighting the importance of firsthand experience of the exact situation particular to that locale. The Regulation further states that EU common basic standards are a baseline, which Member States have the right to go above and beyond. This, in combination with the maintaining of the requirement that Member States notify the Commission of any alternative measures enacted, confirms the EU's position as primarily one of oversight.

The evolution of EU aviation security policy can be seen from the presence in Regulation (EC) No 820/2008 of measures that relate to common basic standards that did not appear in Regulation (EC) No 2320/2002. A prominent example is those measures originally contained in Regulation (EC) No 1546/2006, which was a result of the threat presented by the LAGs plot, further demonstrating the inherent nature of developments in aviation security. In addition, the evolving scope and coverage of EU aviation security can also be seen from the growing depth of the policy. There are measures in Regulation (EC) No 820/2008 which are complex and thus incredibly detailed that relate to standards which under previous policies were simply the statement of an issue for attention, for example potentially disruptive passengers.

This expansion of the scope and coverage of the policy as demonstrated by Regulation (EC) No 820/2008 and its amendments demonstrates vertical spill-over occurring within EU aviation security. There has been a definite increased focus on facilitation as a result of involvement in aviation security, which is yet more evidence of spill-over. This is demonstrated in Regulation (EC) No 820/2008 through the requirement that Member States communicate to passengers what constitutes prohibited articles. Further evidence can be seen from the considerations of the operational implications caused by the restrictions on liquids in Regulation (EC) No 483/2009, Regulation (EU) No 133/2010, Regulation (EU) No 134/2010 and Regulation (EU) No 293/2010.

Regulation (EC) No 820/2008, despite the positives identified above, also highlights negatives regarding EU aviation security. There are areas of aviation security for which no provisions are made in Regulation (EC) No 820/2008. The measures for implementing the common basic standards relating to these areas are, therefore, as they were when they featured in Regulation (EC) No 622/2003 and/or the revisions to it. The Regulation thus fails in its aim to consolidate all amendments. Furthermore, Regulation (EC) No 820/2008, which was passed in August 2008, was created to consolidate Regulation (EC) No 622/2003 and the numerous

amendments to it into one regulation. Regulation (EC) No 622/2003 however pertained to Regulation (EC) No 2320/2002, which was repealed five months previously, when Regulation (EC) No 300/2008 was passed in March 2008. Regulation (EC) No 820/2008, therefore, consists of the measures for implementing the common basic standards contained in legislation that was already extinct.

8-5--Regulation (EC) No 272/2009 and associated legislation.

This section is concerned with the evaluation of Commission Regulation (EC) No 272/2009. As with the examinations of the previous key pieces of policy, the section also looks at that legislation which pertains directly to Regulation (EC) No 272/2009 – namely Commission Regulation (EU) No 297/2010 of 9 April 2010 amending Regulation (EC) No 272/2009 supplementing the common basic standards on aviation security. With Regulation (EC) No 272/2009, the EU expands on its previous efforts regarding legislating what aviation security standards are required and how this should be achieved. It was mentioned in section **8-3** that Regulation (EC) No 272/2009 pertains directly to Regulation (EC) No 300/2008. Regulation (EC) No 272/2009 is the first policy to amend - by way of supplementation - the common basic standards laid down in Regulation (EC) No 300/2008. In order to understand why Regulation (EC) No 272/2009 is not considered to simply be a policy associated with Regulation (EC) No 300/2008 but rather to be a key piece of legislation in its own right, consideration must be given to how it relates to the policies that preceded it. Regulation (EC) No 300/2008 presented the common standards the EU considers that Member States should achieve, i.e. the criteria for acceptable aviation security. Regulation (EC) No 622/2003 and Regulation (EC) No 820/2008 provided the measures for the implementation of said standards – the rules which need to be adhered to in order to meet the standard required. Regulation (EC) No 272/2009 however goes a step further, it not only supplements the standards, but also indicates the specific methods through which the measures are to be implemented. This further vertical spill-over is in clear contrast to the statement

made in Regulation (EC) No 300/2008 regarding the nature of EU aviation security policy.

The purpose of Regulation (EC) No 272/2009, as stated in the preamble, is to adopt general measures to supplement the existing common basic standards. Again, this demonstrates further vertical spill-over. The measures laid down in the Regulation are concerned with eleven specific aspects of aviation security which include: 'screening, access control and other security controls as well as in the field of prohibited articles, third country recognition of equivalence, staff recruitment, training, special security procedures and exemptions from security controls' (OJ L 91, 3.4.2009: 7). In keeping with the EU's inherent approach of consensus building, the preamble also states that the Committee on Civil Aviation Security and therefore the Member States have agreed the measures set out in Regulation (EC) No 272/2009.

Further vertical spill-over is demonstrated through Regulation (EC) No 272/2009 supplementing the standards previously legislated. One area in which this occurs is concerned with regulating the movement of persons in sensitive areas of airports. The Regulation amends the criteria for defining the CP of SRA - which are designed to prevent contamination of departing passengers and their luggage - to include hold baggage. The Regulation also expands on previous legislation concerning access control to both the SRA and airside by detailing the criteria that must be met for persons or vehicles to be granted access. Namely that they have the appropriate authorisation and passes and, moreover, a legitimate reason for entering. These measures relate to such a fundamental aspect of airport security and are of such a commonsensical nature that the timing of their inclusion in EU policy speaks volumes. It must be conceded that their inclusion is positive insofar as the EU expanding policy in such a way improves security. The fact that such simple and obvious measures were only enacted after seven and a half years of legislation raises questions about the EU's level of understanding of aviation security.

The supplementation of Regulation (EC) No 272/2009 does not only consist of amending the standards by expanding on aspects of existing legislation. A further vertical spill-over also occurs through the inclusion of issues not detailed in previous policies concerned with implementation. Two of these are concerned with screening. The first is the conditions for screening or alternative security controls of: Air Carrier materials and mail, and Cargo and Mail. The second is In-flight supplies and Airport supplies – both the conditions for screening or other security controls, and the process for approval or designation of regulated suppliers and known suppliers. In addition to the criteria for recognising the equivalence of security standards of third countries, Regulation (EC) No 272/2009 is also concerned with the conditions under which special security procedures or exemptions from security controls may be applied. Another issue, which is supplemented, is that of staff training. Prior to Regulation (EC) No 272/2009, the legislation was only concerned with the training of security managers. The Regulation not only details the accepted methods of training but also provides the criteria for staff recruitment. Thus Regulation (EC) No 272/2009 continues to considerably expand the scope of the EU's legislation of aviation security.

One area of aviation security in which Regulation (EC) No 272/2009 is concerned with specific methods is the screening of people and items entering either an SRA or the confines of an aircraft, both cabin and hold. This includes; cabin baggage, hold baggage, cargo to be carried on passenger aircraft, items carried by persons other than passengers and air carrier mail and materials. The Regulation lists the various screening methods which are approved for use either individually or in combination with one another. In addition, the Regulation also stipulates the conditions on which new technologies and/or methods may be used, this is in keeping with previous legislation that it must be on a trial for a limited time and must not affect overall levels of security. Regulation (EC) No 272/2009 also lists the methods approved for vehicle examinations, aircraft security checks and aircraft security searches, with the same provision made for the inclusion of new technologies and methods. What is most notable about this aspect of the Regulation is that under

previous policies including Regulation (EC) No 820/2008 this was an area deemed necessary to be kept secret.

Again, in contrast with previous policies, Regulation (EC) No 272/2009 considers prohibited articles not under screening of passengers but as a separate aspect. Once again this is at the discretion of the appropriate authority, thus highlighting the front line role of the Member State. The removing of 'Liquids' from the prohibited items list and introducing specific screening measures under Regulation (EC) No 272/2009 is part of the EU's aim to eventually remove all restrictions on the carriage of LAGs, further demonstrating the Commission's ability as a supranational policy entrepreneur. This issue is the main focus of the next piece of legislation to be considered: Regulation (EU) No 297/2010.[38] The Regulation states it is 'now time to put an end to the restrictions on liquids, aerosols and gels, moving progressively from banning most liquids to a system of screening for liquid explosives' (OJ L 90, 10.4.2010: 1). Under Regulation (EU) No 297/2010, airports are required to make arrangements to ensure that within three years they have the technology in place to ensure the screening methods in use are capable of detecting liquid explosives. Furthermore, the Regulation shows that the EU recognises the variety of airports within its borders and thus 'the need for flexibility on how to operate security measures' (OJ L 90, 10.4.2010: 1). As a result the legislation does not specify any particular technologies or equipment, but that the choice should be based on what would be most effective and efficient for the airport. This is in keeping with the pathos of Regulation (EC) No 300/2008 and further demonstrates the EU's understanding of the diversity of the Member States.

Regulation (EU) No 297/2010 does not simply, however, cover the screening of LAGs. The Regulation also covers the issue of the carriage of cargo on passenger aircraft. Regulation (EC) No 272/2009 detailed the accepted screening methods for baggage, cargo and mail intended for the hold of an aircraft. Regulation (EU) No 297/2010 expands on this by acknowledging that it is occasionally necessary to 'make provision for the additional methods of screening shown to be effective for

[38] Commission Regulation (EU) No 297/2010 of 9 April 2010 amending Regulation (EC) No 272/2009 supplementing the common basic standards on civil aviation security.

screening some or all types of cargo' (OJ L 90, 10.4.2010: 1). Furthermore, the Regulation acknowledges that it is necessary in this regard for EU aviation security legislation to include implementing measures. As such, Regulation (EU) No 297/2010 states that metal detection equipment is to be added to the list of approved methods for screening hold baggage, cargo and mail. This vertical spill-over, based on knowledge gained, further substantiates a central point of this thesis: that of the importance of experience in aviation security and thus the legislation concerning it.

The final notable aspect of Regulation (EU) No 297/2010 is concerned with the issue of facilitation. The preamble to the Regulation states 'one-stop security is the main facilitating element offered by EU legislation. Therefore the harmonisation of screening methods is essential in order to maintain one-stop security within the EU' (OJ L 90, 10.4.2010: 1). Chapter **5** showed the importance of facilitation with regard to aviation security. The spill-over to include facilitation in aviation security legislation further demonstrates the successful development of the EU's policy on aviation security. Furthermore, by regulating the actions of the Member States in order to achieve its aim, the EU is continuing to show its ability to act as a supranational policy entrepreneur.

Regulation (EC) No 272/2009 is concerned with amending Regulation (EC) No 300/3008 by supplementing the common basic standards. Regulation (EC) No 300/2008 contained the common basic standards and the measures for their implementation were laid down in Regulation (EC) No 820/2008. Regulation (EC) No 272/2009 contains specific methods through which the measures for implementing the common basic standards are to be achieved, yet the preamble to the Regulation states that its purpose is to adopt general measures. As a result of the indication of specific measures through which implementation is to occur, Regulation (EC) No 272/2009 appears to represent a complete about turn by the EU on its perceived role in aviation security. Specifically, this is from one of support and cooperation to control.

The contents of Regulation (EC) No 272/2009 present further negatives for an assessment of EU aviation security. The measures in Regulation (EC) No 272/2009 regarding access control constitute such a basic level of security that it is inconceivable such a fundamental aspect was not included in the legislation until 2009. This not only speaks to the weakness of Regulation (EC) No 300/2008 but to that of all previous policies.

The Regulation does however have numerous positive aspects. Primarily this is that it considerably expands the scope of EU aviation security by way of both horizontal and vertical spill-over. This is through including issues not previously legislated as well as going into a higher level of detail on many of those that were. Not only does Regulation (EC) No 272/2009 improve the level of security by fixing the mistakes of the previous policies but it also widens and deepens the scope of EU aviation security. The increased transparency seen in Regulation (EC) No 300/2008 and Regulation (EC) No 820/2008 continues. More aspects of EU aviation security are newly classified as not necessary to be kept secret. The Regulation, therefore, shows the development of the EU's understanding of what constitutes sensitive information that in the wrong hands would be useful intelligence enabling acts of unlawful interference and what does not. The removing of LAGs as a category of prohibited articles and introducing of specific screening measures under Regulation (EU) No 297/2010 demonstrates a commitment to facilitation, which is a commendable and necessary attribute for an actor in aviation security, especially at the international level. Furthermore, it demonstrates both initiative and proactive tendencies reinforcing the EU's ability to act as a supranational policy entrepreneur.

8-6--Regulation (EU) No 185/2010 and associated legislation.

Regulation (EU) No 185/2010 states that Regulation (EC) No 1217/2003, Regulation (EC) No 1486/2003, Regulation (EC) No 1138/2004 and Regulation (EC) No 820/2008 all refer to Regulation (EC) No 2320/2002 and as a result of which are repealed by

Regulation (EU) No 185/2010. Thus Regulation (EU) No 185/2010 is the piece of policy legislating the implementation of Regulation (EC) No 300/2008. It is for this reason that it is considered to be one of the key pieces. Similarly to Regulation (EU) No 272/2009, the preamble to Regulation (EU) No 185/2010 states that the purpose of the Regulation is to provide both detailed measures for implementing common basic standards, as well as general measures to supplement the standards. The irrelevance of Regulation (EC) No 820/2008 is supported by the reason why Regulation (EU) No 185/2010 repeals Regulation (EC) No 820/2008. Due to this, and in order to assess the progress of the policy legislating implementation, this section compares Regulation (EU) No 185/2010 with its valid predecessor - Regulation (EC) No 622/2003 and not Regulation (EC) No 820/2008.

Another notable point of the preamble to Regulation (EU) No 185/2010 is the position that 'if they include sensitive security measures, these measures should be regarded as EU classified information . . . and should therefore not be published' (OJ L 55, 5.3.2010: 1). Further examination of the Regulation shows that there are a significant number of measures to which this has been applied. Furthermore, this repeatedly occurs in areas where all information, including detailed measures, has under previous legislation been published. This indicates that during the drafting of Regulation (EU) No 185/2010 there has been a re-evaluation of what measures should be kept secret. The history of acts of unlawful interference with civil aviation has shown many instances of terrorists engaging in reconnaissance missions prior to attacks, as well as evolving new methods to circumvent the defensive measures that are in place. By removing information regarding certain aspects of aviation security from the public domain, and especially not publicising new measures, the EU is not only strengthening its aviation security capabilities but also demonstrating the wisdom to learn from the past.

Regulation (EU) No 185/2010 first and foremost legislates the implementation of the common basic standards contained in Regulation (EC) No 300/2008. As one would therefore expect, the content of the Annex to the Regulation – the actual measures, follow exactly the structure of the standards contained within the Annex

to Regulation (EC) No 300/2008. Given the passage of time, there are, however, inclusions in Regulation (EU) No 185/2010 which did not appear in Regulation (EC) No 300/2008. Also, there is one aspect of Regulation (EC) No 300/2008 for which there is no provision made in Regulation (EU) No 185/2010: the issue of Demarcated Areas. This is due to its absence from the policies which Regulation (EU) No 185/2010 replaces. As was demonstrated in the previous chapter, the issue did not become a subject of the legislation until Regulation (EC) No 849/2004 and did not feature in Regulation (EC) No 622/2003. As Regulation (EC) No 849/2004 was an amendment of Regulation (EC) No 2320/2002 not Regulation (EC) No 622/2003, it was not included in Regulation (EC) No 820/2008.

The first aspect of Regulation (EC) No 185/2010, which is a new inclusion, is the issue of Escorted Access. This is a vertical spill-over within the issue of access control that is concerned with the escorting of persons airside or within the SRA or CP, who are not in possession of a valid airport identity card required to gain access. This is not only a further example of the EU's spill-over towards facilitation, but also further evidence of how facilitation has caused EU aviation security policy to change, demonstrating reverse spill-over.

At times, aspects of EU legislation on aviation security have actually caused problems rather than solving them, leading to the legislation being considered un-implementable, as is seen from both Chapters **7** & **8**. One such situation has arisen on the subjects of the screening of persons other than passengers and items carried in conjunction with the issue of prohibited articles. Throughout the EU's legislating of aviation security, the items carried by persons other than passengers attempting to gain access to either airside or the SRA have been subject to the same measures as passengers' cabin baggage. As such, one notable aspect of Regulation (EU) No 185/2010 is that not only does it contain the provision for persons other than passengers to carry certain prohibited articles if they are authorised to do so and if operational requirements necessitate said item, as was first established in Regulation (EC) No 68/2004, but also a list of these items. These are generally referred to as tools of the trade (TOT). Unfortunately the attachment containing

this list is not published. Regulation (EU) No 185/2010 is, therefore, further demonstration of both the importance afforded to facilitation by the EU in its aviation security policy, and also how the EU's ability to develop workable policies has improved with experience.

One new inclusion under Regulation (EU) No 185/2010 is unsurprisingly concerned with the screening of LAGs. Regulation (EC) No 622/2003 was drafted before the focusing event of the liquids plot of 2006 and as such the smuggling of liquid explosives in cabin baggage had yet to become a concern. Regulation (EU) No 185/2010 does not, however, introduce new measures relating to the screening of LAGs but contains the same measures as Regulation (EC) No 272/2009. The Regulation does, however, acknowledge that the methods and technologies available for the screening of liquids for explosives will improve over time, and states that it may be necessary, as a result of developments and based on experience, to revise the measures pertaining to screening liquids. This inclusion therefore shows the importance the EU places on ensuring that aviation security policy is comprehensive.

Another aspect of Regulation (EU) No 185/2010 which did not feature in Regulation (EC) No 622/2003, but has been a feature of the legislation before Regulation (EU) No 185/2010, is the issue of Regulated Agents and Known Consignors with regard to cargo and mail intended for carriage on passenger aircraft. In keeping with many other aspects of the Regulation, the specific measures for implementing these standards are deemed necessary to be kept secret and thus not laid down in the Regulation. In creating Regulated Agents and Known Consignors the EU is further showing the importance it places on facilitation and also how its policy is developing and becoming more comprehensive as a result of experience gained.

The final new aspect is concerned with trialling new technologies. This is similar to both the issues of LAGs screening and items carried by persons other than passengers in that it has occurred in legislation prior to Regulation (EU) No 185/2010 but was not included in Regulation (EC) No 622/2003. The Regulation lays

down the applicability, procedures and constraints for conducting trials of new screening methods, as has been seen in previous legislation. Such thoroughness is a necessary quality if the EU is to be a strong and successful supranational policy entrepreneur in aviation security. It is argued, however, that a strong legislator is one who does not pass legislation unnecessarily and who ensures new policies are sound and provide comprehensive cover for the legislation they repeal before they are passed.

There is a corrigendum to Regulation (EU) No 185/2010, but this, however, simply rectifies a numbering issue – it does not make any changes to the measures contained within. There are also seven pieces of policy which pertain directly to Regulation (EC) No 185/2010. The first of these is Commission Regulation (EU) No 357/2010.[39] The measures contained within EU legislation concerned with the controls to protect liquids and STEBs regarding airside sales and in-flight supplies were laid down in Regulation (EC) No 820/2008. Regulation (EC) No 185/2010 which repealed Regulation (EC) No 820/2008, however, contained no provisions to replace them and, as such they are laid down in Regulation (EU) No 357/2010. As with Regulation (EC) No 185/2010, due to the issue being deemed sensitive, the detailed provisions are laid down in an unpublished Annex.

The second piece of amending legislation is that of Commission Regulation (EU) No 358/2010.[40] Regulation (EC) No 820/2008 details the criteria for the carriage of LAGs and also those third countries which are considered to have an equivalent level of security to the Member States. The Regulations amending Regulation (EC) No 820/2008: Regulation (EC) No 483/2009; Regulation (EU) No 133/2010; Regulation (EU) No 134/2010 and Regulation (EU) No 293/2010, each extended the list of third countries considered to be equivalent. As Regulation (EC) No 820/2008 is repealed so are the amending Regulations and therefore the exemptions for

[39] Commission Regulation (EU) No 357/2010 of 23 April 2010 amending Regulation (EU) No 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security.

[40] Commission Regulation (EU) No 358/2010 of 23 April 2010 amending Regulation (EU) No 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security.

those third countries listed. In addition Regulation (EU) No 297/2010 imposed restrictions on LAGs carried by transferring passengers originating from third countries. As a result, Regulation (EU) No 358/2010 re-introduces the restrictions contained in Regulation (EU) No 820/2008 and also the list of third countries which are exempted in it and the subsequent amending Regulations. Both Regulation (EU) No 357/2010 and Regulation (EU) No 358/2010 demonstrate the EU's approach of ensuring the necessary measures for any aspects of aviation security not covered by a Regulation repealing previous policies are laid down in the legislation prior to the repealing legislation entering into force. The ability to acknowledge shortcomings and ensure the timely rectifying of errors is an attribute necessary for successful legislating.

Commission Regulation (EU) No 573/2010[41] introduces into the policy the possibility of using a new screening method. It is concerned with Explosives Detection Dogs (EDD). Under Regulation (EU) No 573/2010 they can be used as a method of screening passenger and cabin baggage; persons other than passengers and items carried; and hold baggage. The Regulation contains the guidelines for their use, including the standards they must be able to meet, training requirements, and approval procedures for their use. This inclusion is another example of the comprehensiveness the EU seeks to achieve on aviation security policy.

Commission Regulation (EU) No 983/2010[42] is concerned with the equivalence of security standards in a third country, namely the US. The Regulation adds the following two requirements: that the Commission will inform the Member States if security standards drop below the necessary level, and, the Member States will inform the Commission if they believe the necessary level has been re-established. Under the Regulation these requirements apply in regard to aircraft security, passengers and cabin baggage, and hold baggage. This wariness shows the EU

[41] Commission Regulation (EU) No 573/2010 of 30 June 2010 amending Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security.

[42] Commission Regulation (EU) No 983/2010 of 3 November 2010 amending Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security.

acknowledges that the ability of a country to consistently maintain an acceptable level of security cannot be taken for granted. The awareness of how rapidly the situation can change demonstrates the further deepening of the EU's understanding of aviation security. The addition of such requirements in to the legislation demonstrates that the EU is being proactive. It also depicts the relationship between and roles of the EU and the Member States. Both of which further highlight the importance afforded to experience.

Commission Regulation (EU) No 334/2011[43] is another policy concerned with the issue of LAGs. It is concerned with the exemptions that allow the carriage of LAGs obtained at airports in third countries recognised as having equivalent security standards to the EU. The Regulation acknowledges that the exemptions have had a beneficial impact. Unfortunately, however, under the previous legislation the exemptions will expire on 29 April 2011. Regulation (EU) No 334/2011 extends these exemptions until 29 April 2013. This is further evidence of the importance the EU places on harmonisation as this extension will bring the exemptions in line with other aspects of the LAGs issue.

Commission Regulation (EU) No 720/2011[44] is concerned with the first phase. It states that the requirement to screen LAGs obtained outside of the EU be achieved by a certain date should be removed. This is in order to aid harmonisation, as due to the changing nature of the legislation concerning LAGs over a short period of time, not all EU airports would be able to implement the necessary standards by the required date. This is both a positive and negative development. The extending of the deadline by which standards are required in order to allow passengers to carry everyday items, which can also pose a real and credible threat, cannot be considered to be beneficial for security levels. The emphasis on harmonisation for

[43] Commission Regulation (EU) No 334/2011 of 7 April 2011 amending Regulation (EU) No 185/2010 of 4 March laying down detailed measures for the implementation of the common basic standards on aviation security.

[44] Commission Regulation (EU) No 720/2011 of 22 July 2011 amending Commission Regulation (EC) No 272/2009 supplementing the common basic standards on civil aviation as regards the phasing in of the screening of liquids, aerosols and gels at EU airports.

the sake of both the passenger and airports does, however, show that the EU is serious with regard to facilitation.

The final piece of legislation this section considers is that of Commission Regulation (EU) No 859/2011.[45] The Regulation is concerned with introducing rules in an area not covered by Regulation (EU) No 185/2010: cargo and mail flying on passenger aircraft arriving in the EU from third countries. It details that the history and relationships between a third country and both the EU and individual Member States, should be considered when assessing the equivalence of security levels. Any bilateral agreements which result from this should focus on increased cooperation on aviation security. A notable aspect of Regulation (EU) No 859/2011 is the acknowledgement it makes of the EU's place in the international system. As was seen in Chapter **5**, ICAO standards have to be set at the LCD. The Regulation suggests that the EU should therefore use its superior resources to aid third countries meet EU standards and thus increase levels of security, not just in the EU but globally. In other words acting as a supranational policy entrepreneur outside of the EU's borders.

The Regulation also states that, by July 2013, the Commission, Member States and stakeholders should consider how to achieve an independent validation system for non-EU registered airlines who carry cargo from third countries to the EU. The inclusion of both the Member States and stakeholders is further justification for the central argument of this thesis concerning what the role of the EU should be in aviation security. The standards contained in the Regulation are to be in place until June 2014, and the Regulation also contains the requirements that Member States need to meet by July 2014. Again the phasing-in of standards to ensure that implementation is achievable shows how the EU has learnt from experience and considers the implications of its policy and the issues associated with harmonisation.

[45] Commission Regulation (EU) No 859/2011 of 25 August 2011 amending Regulation (EU) No 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security in respect of cargo and mail.

Regulation (EU) No 185/2010 was considered a key piece as it is concerned with the implementation of another key piece: Regulation (EC) No 300/2008. Regulation (EU) No 185/2010 did not come about until two years after Regulation (EU) No 300/2008 was passed meaning that there was no legislation specifically concerned with the measures for implementation during that time. Given the importance of ensuring implementation as no legislated standards are self enacting, and the EU's stated commitment to compliance monitoring, this absence represents a serious flaw in EU policy on aviation security.

The aspects of Regulation (EU) No 185/2010 concerned with TOT, LAGs and cargo and mail intended for carriage on passenger aircraft demonstrate the EU's proactive approach so far as to consider the implications of policies in order to mitigate potential issues. Regulation (EU) No 185/2010 suggests a commitment to ensuring the legitimacy of new policies, thus acknowledging the mistakes of the past. This is necessary if the EU is to be able to successfully legislate aviation security, let alone become a strong actor in the field.

The coverage of escorted access demonstrates not only the importance afforded to facilitation but also reverse spill-over. EU involvement in facilitation resulted from its involvement in aviation security, however, Regulation (EU) No 185/2010 shows that facilitation is now influencing EU policy on aviation security. This shows that not only does the EU have a better understanding of the inter-connected nature of aviation security and facilitation, but that it is applying lessons learnt from one area to ensure workable policies in another. Facilitation is also shown to be a key feature of Regulation (EU) No 185/2010 through the coverage of both the issues of TOT and cargo and mail carried on passenger aircraft. The coverage of TOT and conditions for carriage of cargo and mail on passenger aircraft under Regulation (EU) No 185/2010 also shows the development of EU policy on what is considered secret. This shows a deeper understanding of the threat and that the EU is learning lessons from other areas of counter-terrorism. This is further supported by the aspects of the Regulation covering escorted access.

Both Regulation (EU) No 357/2010 and Regulation (EU) No 358/2010 are concerned with amending Regulation (EU) No 185/2010 on the subject of LAGs. Regulation (EU) No 357/2010 is concerned with airside and in-flight supplies, Regulation (EU) No 358/2010 - the restrictions and exemptions regarding carriage from third countries. Both policies deal with aspects of amendments to Regulation (EC) No 820/2008 which were not covered by Regulation (EU) No 185/2010. By failing to ensure Regulation (EU) No 185/2010 contained all the necessary provisions of the legislation it repealed, its passing appears rash. Such action suggests the EU has failed. At best, this is the failure to remember the lessons it has previously learnt from such a mistake, at worst, to ever learn the lesson. Given that the lesson in question cannot be considered anything other than vital for success in this field, the EU needs to ensure that is not the case. Regulation (EU) No 357/2010 and Regulation (EU) No 358/2010 are actually, however, evidence of the EU's commitment to ensuring comprehensive coverage, as they, not only identify, but rectify the shortcomings of Regulation (EU) No 185/2010 prior to it entering into force.

Regulation (EU) No 983/2010 is especially demonstrative as to how the EU's abilities in aviation security have changed over the course of its involvement. It shows that not only has the EU's understanding of the intricacies and complexities of aviation security greatly improved but that it is clearly influencing policy. This substantiates a key point of the argument presented by this thesis: the importance of experience. The Regulation is also proof that the EU is taking a proactive approach. Most notably Regulation (EU) No 983/2010 clearly illustrates that the relationship between the EU and the Member States is one of cooperation and partnership.

8-7--Other noteworthy pieces of legislation.

Regulation (EC) No 1217/2003 pertained to a requirement of Regulation (EC) No 2320/2002, however, Regulation (EC) No 2320/2002 was then repealed by Regulation (EC) No 300/2008. Regulation (EC) No 300/2008 contained only the most

basic provisions for NQCPs and considerably less detail than Regulation (EC) No 1217/2003. As such Regulation (EU) No 18/2010 was passed. Regulation (EU) No 18/2010 contains many of the same measures as Regulation (EC) No 1217/2003 did. Moreover, it places the same emphasis that Regulation (EC) No 1217/2003 did – specifically on the importance of a common methodology for the national appropriate authorities to ensure compliance monitoring. By specifying the importance of the appropriate authorities and the powers afforded to them, it re-iterates the point made previously regarding the role of the Member States. This recurring theme of harmonisation further demonstrates the EU's commitment to achieve its intentions towards aviation security.

Regulation (EC) No 1486/2003 referred to, and was enacted as a result of, a requirement of Regulation (EC) No 2320/2002. It therefore became obsolete with the passing of Regulation (EC) No 300/2008. As the reason why Regulation (EC) No 1486/2003 was considered to be a noteworthy piece of legislation is because of the subject matter it covers, the same status should be afforded to its replacement. This is Commission Regulation (EU) No 72/2010. Regulation (EU) No 72/2010 is another policy concerned with the result of the vertical spill-over to compliance monitoring. With regards to the content, Regulation (EU) No 72/2010 is in most respects the same as Regulation (EC) No 1486/2003. The emphasis is clearly placed on the same aspects: the need for cooperation between the Member States and the Commission – with the Member States assisting the Commission where necessary, the use of a standard methodology for both conducting and reporting inspections, and, the responsibility and role of the Member State to ensure rectification of deficiencies. The text of the legislation covers all the same aspects namely the roles and responsibilities of those involved, and the processes for planning, conducting and reporting inspections.

There are three mentionable differences between the two Regulations. The first is in terms of the subject matter, specifically the scope of Commission inspections. Under Regulation (EC) No 1486/2003 the Commission was concerned with inspecting the level of security at both the levels of the Member State and also the

individual airport. Under Regulation (EU) No 72/2010 inspections are concerned with 'appropriate authorities of Member States and selected airports, operators and entities applying aviation security standards' (OJ L 23, 27.1.2010: 1). This addition is a clear continuation of the post-Regulation (EC) No 300/2008 increase in vertical spill-over. Another difference is the level of detail the Regulation contains, the Regulation expands considerably on its predecessor in terms of how Commission inspections are to be conducted. Commission inspections are to be conducted in a systematic manner using one or more of the following five methods of information gathering: examination of documents, interviews, observations, verifications and tests. The increased level of detail within the Regulation shows a willingness to provide specific information where it is possible to do so without compromising security and thus the EU's commitment to legislative transparency. The final difference is the inclusion of the statement that those conducting the inspections shall be permitted to carry prohibited articles for the purposes of conducting tests. As this chapter has shown in previous sections, a considerable number of Regulations have included the subject of prohibited articles since Regulation (EC) No 1486/2003 was passed. This further demonstrates the comprehensive nature of the EU's policy on aviation security, resulting from vertical spill-over.

The final noteworthy piece of legislation is that of Commission Regulation (EU) No 1254/2009. Regulation (EU) No 1254/2009 allows that if deemed necessary on the basis of a risk assessment and justified by reasons approved by the Commission, Member States should be able to adopt alternative measures to ensure a suitable level of security. It is this allowance for, and expectation of, derogation from EU policy that causes Regulation (EU) No 1254/2009 to be deemed not only a noteworthy piece of legislation, but perhaps the most important after the key pieces.

Under the Regulation, the first acceptable reason is concerned with small aircraft. These are either those with a maximum take-off weight of less than fifteen thousand kilograms, or those with a maximum take-off weight of less than forty-five

thousand kilograms used by a company for business reasons where no fee is paid by or for the people and goods onboard. In a similar vein another acceptable reason for derogation is regarding flights by air carriers, aircraft manufacturers or maintenance companies providing no passengers, baggage, cargo or mail are onboard. Flights of the emergency services including fire suppression, law enforcement, medical and rescue are also considered to be acceptable reasons for derogation. The Commission also allows for alternative measures to be enacted for humanitarian aid flights, aerial work and Research and Development flights. The final acceptable reason for derogation as set out under the Regulation is the case of rotary wing aircraft. Expressed simply, Regulation (EU) No 1254/2009 states security standards for general aviation is a matter for the Member State and not under the purview of the EU aviation security policy.

Regulation (EU) No 72/2010 is the post-Regulation (EC) No 300/3008 replacement for Regulation (EC) No 1486/2003. Whilst the basic premise remains the same, Regulation (EU) No 72/2010 extends the scope of what is to be inspected to include all operators and entities involved in applying aviation security standards. It also states the particular methods that will be used to assess compliance. Regulation (EU) No 72/2010 also takes into account the issue of prohibited articles, further demonstrating the development and comprehensive nature of aviation security. Regulation (EC) No 1254/2009 is concerned with allowing Member States to adopt alternative measures for all flights that do not have fee-paying passengers, baggage, cargo or mail onboard. It, therefore, reinforces the assessment that Regulation (EC) No 2320/2002 meant EU aviation security policy was not in fact focussed on civil aviation but limited to commercial aviation.

The EU's concern with aviation security standards in third countries shows the beneficial impact experience has on policy. It is precisely the issue the EU should be focusing on, as it is this area in which the EU can demonstrate the value of its involvement – namely the concept of synergy. This is that the whole is greater than the sum of its parts. The EU has a stronger ability to create substantial bilateral agreements than the individual Member States and can significantly increase

harmony of baseline standards for aviation security across multiple borders. Also, the pooled resources on which the EU can draw significantly increases the possibility and extent of aid that could be made available to third countries to increase their aviation security capabilities to the required level of the EU.

8-8--EU efforts in aviation security from the perspective those involved.

Section **7-6** showed that a common view amongst the interviewees was that the weaknesses of Regulation (EC) No 2320/2002 resulted from the EU's lack of experience in legislating aviation security. It was known by EU policy-makers, as a result of the feedback from the industry, that the legislation had to be adapted and contain better rules (INT11, 2011; INT9, 2011; INT16, 2011). Regulation (EC) No 300/2008 resulted from assessment as to whether Regulation (EC) No 2320/2002 was still fit for purpose, and the subsequent finding that it needed to be reviewed, simplified and implemented properly (INT11, 2011). Regulation (EC) No 300/2008 was thus enacted to correct the failings of the previous legislative efforts (INT2, 2011; INT3, 2011; INT4, 2011; INT11, 2011).

The following section looks at the EU's efforts in compliance monitoring. However, the policy-makers interviewed presented a much more positive assessment than the Commission's annual reports. One weakness highlighted by the reports was concerned with the quantity of the inspections. One interviewee acknowledged the issue. Since 2008, there have been less inspections carried out as part of EU compliance monitoring, but these are more targeted – previously inspections were patchwork at best - now, however, they are harmonised, providing a more streamlined and secure programme (INT3, 2011). ICAO produces an annual report showing compliance figures which covers hundreds of provisions. In terms of how many the EU is compliant in it was not even sixty percent in 2006 but in 2009 it was eighty-five percent, further showing the improvement in standards (INT3, 2011). Many of the interviewees stated that the Commission's compliance monitoring programme was in fact a strength of the EU's efforts in aviation security (INT2, 2011; INT3, 2011; INT7, 2011; INT11, 2011). One interviewee went further stating

that the strength of the EU's compliance monitoring is illustrated by the Memorandum of Cooperation with ICAO recognising the EU specific system of the Commission carrying out oversight, and as a result ICAO now audits the Commission (INT3, 2011).

As the requirement for transparency has increased over the years, policy-makers have tended to consult industry more (INT2, 2011; INT3, 2011; INT7, 2011; INT9, 2011; INT12, 2011). The Commission holds meetings with industry (which Member States can sit in on) and then reports on this in meetings with the Member States (INT4, 2011). It is very important for the Commission to consult stakeholders as they have the experience to provide constructive criticism to ensure legislation is not produced that cannot be implemented (INT4, 2011). EU involvement has had significant benefits for the industry resulting from harmonisation of aviation security standards, which has caused the industry to welcome even more harmonisation (INT3, 2011). There are also economic benefits as harmonisation eases operations (INT3, 2011). Airlines have benefitted most from EU commitment to facilitation – there have been hundreds of meetings with working groups, including industry representatives, to balance security and facilitation aimed at removing unnecessary security measures (INT3, 2011). In addition to the benefit to the EU stakeholders, EU efforts in aviation security have also had a global benefit for the industry. The EU has a powerful role in aviation security – it is listened to at the international level (INT3, 2011). It has been able to implement standards outside its borders through bilateral agreements with the more prominent states such as Australia, Canada and the US (INT3, 2011), which is something the individual Member States would have been unable to do. EU efforts in aviation security have also led the way to exporting one-stop security to third countries through bilateral agreements (INT3, 2011). ICAO, due to its wide-ranging membership is constrained by the LCD. The EU becoming involved has ensured higher standards and better efficiency. This has also meant that, by proxy, third countries are required to adhere to higher standards thus resulting in higher standards globally. It is easier for the EU to dictate standards than it would be for a national government due to increased political power but moreover increased economic power (INT2, 2011). Many EU

initiated ideas and improvements have, indeed, gone global (INT3, 2011: INT11, 2011).

A finding of this chapter is that, on paper, the EU's further efforts in aviation security have demonstrated a continuing commitment to the spill-over to facilitation. This is supported by the data obtained from the interviews. Regulation (EC) No 300/2008 was very concerned with facilitation (INT1, 2011; INT2, 2011; INT3, 2011; INT5, 2011; INT11, 2011). The approach of thinking about the passenger before producing legislation has developed over the years (INT2, 2011). To provide security you have to set limits and restrain things to protect the passengers. From the EU perspective the passenger is always in the middle of the focus (INT3, 2011). It is especially important, as in the immediate aftermath of an attack, passengers are happy for security measures to be increased. As the need for them fades in the eyes of the public due to no new attacks, however, they become more disgruntled with the process (INT2, 2011). Passengers have benefitted from EU involvement in aviation security in much the same way that the industry has – through harmonisation. The same rules applying in each country makes inter-state travel easier, and also through one-stop security (INT3, 2011).

No legislative effort is infallible, as it is impossible to address all possible threats due to the event driven nature of aviation security (INT3, 2011). As such, it is impossible to cover every eventuality (INT2, 2011). Since the incident in Yemen in October 2010, there has been a concerted effort to develop rules on cargo. The political view is to increase security to the highest limits and screen it all. Operationally, however, this would cripple both airports and carriers (INT3, 2011). Chapter **6** showed that EU involvement in aviation security resulted from a spill-over from EU counter-terrorism efforts in response to the focusing event of 9/11. There has also however been reverse spill-over. One impact of cooperation in aviation security is that it has resulted in higher cooperation in counter-terrorism, and that those responsible for counter-terrorism have learnt lessons from EU efforts in aviation security (INT3, 2011).

8-9--Application of legislation.

As this chapter is concerned with Regulation (EC) No 300/2008 and subsequent legislation, the start point is March 2008. The fourth report on the implementation of Regulation (EC) No 2320/2002 which covers inspections conducted during 2008 was published in October 2009. It is for this reason that it is covered in this chapter rather than the previous one. During the period considered by the fourth report, that of 1 January to 31 December 2008, the Commission carried out twenty-seven inspections. The report states that these consisted of nine inspections of national appropriate authorities, ten initial airport inspections and eight follow-up airport inspections. Of the nine authorities inspected, two had never previously been inspected. Five were recorded as having high standards, two as reasonable and two as unsatisfactory. Shortcomings were indentified in national training programmes, the monitoring of airline security programmes, and the frequency of monitoring activities and provision for security audits. All of these were issues highlighted by the inspections which formed the basis of the reports considered in the previous chapter. The most common failings were in the field of auditing. More specifically this was 'in respect of the capacity to detect and correct failures swiftly' (European Commission, 2009: 3). The report also notes that the results of the airport inspections also matched with those identified during the Commission's previous inspections.

The fourth report makes the claim that the 2008 initial airport inspections suggested improvement in the four most crucial areas: airport security, aircraft security, passengers and cabin baggage, and hold baggage. The report however substantiates one of the criticisms made in section **7-7.1** through the admission that this claim 'is not entirely empirically based. (A different set of airports will be selected each year, so no direct comparisons can be made.)' (European Commission, 2009: 3-4). The report then continues to further discredit this claim by stating that the weakest areas were found to be relating to access control and staff

screening.[46] As the thesis demonstrated in Chapter **5**, these are two of the most vital aspects of airport security, a point that was supported by the contents of Doc 30 and thus Regulation (EC) No 2320/2002 as shown in Chapter **7**. The report then continues to contradict itself by stating that with regards passengers and cabin baggage, compliance was mostly high, although at some inspected airports serious deficiencies were reported. Furthermore, that these deficiencies stemmed from human factors, which would support the finding that a shortcoming of the national authorities concerns training. As for the final crucial area, hold baggage, the report states that compliance was very good which does imply at least partial improvement, thereby giving some truth to the claim.

Regarding the follow-up inspections, the contents of the report are more positive. It states that 'a greater number of deficiencies had been remedied by the time of the follow-up inspections than had been the case in previous years (European Commission, 2009: 4). The deficiencies and issues noted as a result of the initial inspections does not equate to failings of EU efforts on aviation security. Rather, the failings lie with the Member States who are not adequately implementing the Regulations. The findings of the follow-up inspections actually demonstrates one of the primary strengths of the EU's efforts in aviation security, that of the vertical spill-over to compliance monitoring. By inspecting compliance with the policy, the EU can ensure the implementation of the necessitated standards. This is through the activation of Article 15 of Regulation (EC) No 1486/2003 or infringement procedures. The report states that a number of which were closed, but that three infringement procedures remained open at the end of 2008. These were generally issued because of 'insufficient monitoring activities and lack of national auditors' (European Commission, 2009: 4). The fourth report also found that this general area of shortcoming was also highlighted in the Member States own evaluations. This thesis has previously considered the issue of transparency in relation to aviation security – specifically the implications of how information could be misused in the wrong hands. This provided the explanation for the need for secrecy evidenced by many policies reviewed in both this chapter and the previous chapter. Furthermore,

[46] This is especially disturbing given that at this point in time the industry was well aware of the 'insider threat' (INT4, 2011; INT25, 2012).

this explains the lack of detail evidenced in the report regarding the inspections, as such the majority of the fourth report is concerned with the policy.

The introduction to the fourth report states that 2008 was a 'year of lessons learnt, a time of fundamental reassessment, drawing on 5 years' experience of implementing and inspecting the regime adopted in 2002 after the 9/11 attacks' (European Commission, 2009: 2). This reinforces the findings of the previous two chapters in numerous ways. First, it is yet further confirmation of the findings of Chapter **6** that EU involvement in aviation security began as a result of the focusing event that was 9/11. Second, it adds credence to the key point made throughout the thesis concerning the importance of experience. Third, it supports the conclusion reached in Chapter **7** that Regulation (EC) No 2320/2002 was essentially un-implementable, even with Regulation (EC) No 622/2003 and all of its revisions, and as such required replacing. Fourth, through acknowledging the third it empirically demonstrates the strength of the Commission as an actor in aviation security.

Part two of the report is concerned with the legislation passed during 2008. Part three of the fourth report is concerned with trials, studies and pilots. During 2008 trials were conducted involving the use of millimetre wave and backscatter radiation body scanners, and the use of dogs for hold baggage and cargo screening. The report notes that the results of the dog trials led to legislative development. Also, during 2008 studies were conducted regarding the screening of laptop computers in cabin luggage to possibly dismiss the requirement of having to remove them for separate screening. The report states that these were 'temporarily halted as the results proved inconclusive' (European Commission, 2009: 7). The report also states that the Commission concluded its work on the pilot study concerning the cargo database meant to aid secure movements of airfreight. The study was successful causing the Commission to initiate a project to build such a database, the use of which was to be mandatory.

Part four of the fourth report is concerned with dialogue with international bodies and third countries. The report states that the Commission conducts aviation security discussions 'on a bilateral and multilateral basis. This provides opportunities to share best practice, pool expertise and find global solutions to security problems' (European Commission, 2009: 7). On the subject of international bodies the report details the Commission's relationship with ICAO. It states that the Commission participates in meetings with ICAO's AVSEC panel. Also the Commission and ICAO reached agreement on a Memorandum of Cooperation on compliance monitoring. This shows how far the Commission has come. When the EU first became involved in aviation security it had no functional relationship with ICAO on security matters. This has progressed through observer status to direct involvement demonstrating the strength of the EU as an actor in aviation security.

In addition, the report highlights certain bilateral activities – the Commission's work with the US, Canada and Australia to agree joint positions, or present joint papers to ICAO. This further demonstrates the strength of the Commission as a supranational policy entrepreneur through the ability to affect aviation security outside of EU borders. The report states that bilateral efforts with third countries during 2008 covered two issues: the LAGs threat and one-stop security arrangements. The most significant of which has been with the US. In 2008 an EU-US transport co-operation group was established 'to discuss related issues and a detailed comparison between the measures implemented on each side of the Atlantic' (European Commission, 2009: 7). The report states that the Member States have shown interest in reaching an agreement which has progressed so far as to have a protocol in place regarding reciprocal compliance monitoring activities – specifically airport inspections. Again, this is evidence of the strength of the Commission's ability to act as a supranational policy entrepreneur externally.

The final aspects of the report are concerned with financing aviation security and future work. On the issue of financing – the report states that it has been regularly raised: with the Member States stating that the industry (and therefore ultimately their passengers) should be responsible for the costs whilst the industry (and the

EP) believing that there ought to be a higher level of state financing. Chapter **5** of the thesis has shown that this debate is far from new, rather it has been an aspect of aviation security since its inception. Furthermore, the positions outlined in the report are consistent with the historical positions of those in aviation security prior to EU involvement. The report also lays out a framework for the EU's aviation security efforts for 2009. The fourth report concluded by stating that 2008 saw 'much progress. It was the year in which the foundations were laid for the aviation security regime in the new decade' (European Commission, 2009: 9).

The Commission's fifth report on the implementation of regulation (EC) No 2320/2002 establishing common rules in the field of aviation security was published in 2010 and covers the period from 1 January to 31 December 2009. The introduction classes 2009 as 'a time of consolidation in the EU world of aviation security' (European Commission, 2010: 2). The structure of the report is the same as that of its predecessor. As is, therefore, to be expected, the report contains little specific information regarding the compliance monitoring activities conducted during 2009. Nine national appropriate authorities were inspected, all of whom had been previously inspected and the results were consistent of those from previous years. The single biggest issue being the shortcomings concerning the ability to detect and correct failures with the required speed. Nineteen airport inspections were conducted, which on the whole represented a high level of compliance. The report makes the assertion that the 'overall percentage of core measures found to be in compliance rose again by a small margin, to almost 85%' (European Commission, 2010: 3). The report does not state which airports were inspected or even in which Member State were the airports that were inspected, and inspections were not carried out within all Member States, or even in the same Member States as the previous year. Furthermore, the report states that whilst compliance with all measures was inspected, this was not at each and every inspection. As such, the validity of any statistical representation of compliance must be considered questionable.

Most of these areas of weak compliance have been highlighted by previous inspections suggesting that this is endemic across the EU. Whilst these failings lie with the Member States and individual airports and not with the EU, this thesis has demonstrated that any legislation is only as good as the implementation of it. If EU aviation security is to be strong, it needs more than just policy containing a high level of common standards. It needs to ensure there is full practical compliance with the legislated standards. The report states that 'the Commission routinely carries out a limited number of follow up inspections. Where several serious deficiencies have been indentified during the initial inspection, a further visit will certainly be scheduled' (European Commission, 2010: 4). Given the nature of aviation security any deficiency (even a minor one) could potentially provide an opportunity to be exploited allowing for acts of unlawful interference. Only conducting follow up inspections in the cases of multiple serious deficiencies, and having no programme in place which routinely checks that strong implementation is continuously being maintained raises questions concerning the extent of the EU's compliance monitoring efforts.

The report states that in cases of deficiencies being identified during inspections 'files remain open until the Commission is satisfied that appropriate rectification action has been taken'(European Commission, 2010: 4). Furthermore, that if 'deficiencies found at an airport are considered so serious as to present a significant threat to the overall level of civil aviation security in the Community, the Commission will activate Article 15 of Regulation 1486/2003' (European Commission, 2010: 4). The report also states that there is a further 'possible sanction in the most serious cases, or in cases of prolonged non-rectification or reoccurrence of deficiencies, [which] is to open infringement proceedings' (European Commission, 2010: 4). During 2009 twenty inspection files were closed meaning that thirty-seven remained open at the end of the year. No Article 15 cases were open during 2009. One infringement procedure was closed, and another begun resulting in three cases pending at the end of the year. The fact that the EU common standards are legally binding is one of the EU's greatest strengths as an actor in aviation security.

In addition to detailing the legislation adopted during 2009, the fifth report outlines the aviation security research efforts conducted during the year. In terms of trials the subjects were the same as the preceding year: body scanners and EDD. In addition 'QinetiQ study on human factors in aviation security screening was presented to the Aviation Security Regulatory Committee in January 2009' (European Commission, 2010: 7). Previous reports had as a result of the inspections identified both human factors and training as a common cause of deficiencies. The commissioning of a study to supplement the Commission's own findings for the purpose of informing the content of new legislative proposals further demonstrates the Commission's ability as a supranational policy entrepreneur.

The final part of the fifth report builds on this by considering dialogue with international bodies and third countries. It is clear from the report that a considerable aspect of EU security research during 2009 was concerned with the LAGs issue, resulting in the presentation of a paper to the AVSEC panel and the hosting of an ICAO workshop on the subject. Other papers presented to the AVSEC panel dealt with the issue of one-stop security and the threat to aviation security. One-stop security also comprised a significant portion of the EU's work with third countries, specifically the US. The other main concern of third country relations was the subject of LAGs – specifically exemptions for duty free purchased airside by transferring passengers. Such third country agreements further reinforce the Commission's role as a supranational policy entrepreneur not just in terms of the EU but also externally.

Regulation (EC) No 300/2008 and Regulation (EC) No 820/2008 officially entered into force in April 2010. As such the next report this section considers is the 2010 annual report on the implementation of Regulation (EC) No. 300/2008 on common rules in the field of civil aviation security. Published in 2011 it is concerned with the period of 1 January to 31 December 2010. The report follows the same structure as those concerned with the implementation of Regulation (EC) No 2320/2002. Part one of the 2010 annual report is concerned with the Commission's inspections of

Member States' appropriate authorities and EU airports as is required under Regulation (EC) No 300/2008. As with previous reports, the 2010 annual report does not provide a high level of detail concerning the inspections. The report states the inspections were conducted by a team of eleven Commission inspectors aided by forty-six inspectors from the pool of national inspectors nominated by the Member States. The inspectors monitored five national appropriate authorities and nineteen airports, including two follow-up inspections.

In terms of the appropriate authorities, the report states that the deficiencies found mostly relate to the Member States aligning of the NASPs (including the NQCPs) to the new legal framework of Regulation (EC) No 300/3008. Other deficiencies included some Member States still evidencing a lack of capacity to detect and correct failures with appropriate speed, the monitoring of all aspects of the legislation, and the frequency and coverage of national inspections. As this section has demonstrated, these are recurring failings. The same also holds true for the results of the airport inspections. The report also states that at the end of the year twenty-seven inspection files were still open, meaning that the reported deficiencies were at that point not yet suitably rectified. One Article 15 case had to be opened during 2010, although it was closed four months later showing a positive speed of rectification.[47] More seriously, two infringement procedures were initiated during 2010 causing five to be in progress at the end of the report period. In keeping with its predecessors, the 2010 report then continues on in Part two to detail the legislative efforts during 2010,

Part three of the report is concerned with reports, trials and studies. In this section, the report looks at the reaction to the Yemen print cartridge bombs incident of October 2010. Due to this, the report recommended the expedited adoption of further measures to enhance the security of air cargo and mail originating from third countries. This is not only empirical evidence of the nature of aviation security developments to occur in response to focusing events, but also demonstrates the Commission's position as a supranational policy entrepreneur. Part four of the 2010

[47] Regulation (EC) No 72/2010 contains the same Article 15 provision that was formerly in Regulation (EC) No 1486/2003.

report states that the Commission attended the annual ICAO AVSEC panel meeting presenting papers on both LAGs screening and air cargo security and that the Commission regularly took part in ECAC task force meetings. By participating in such forums the Commission is demonstrating its potential to influence security matters outside the borders of the Member States and thus its ability as a supranational policy entrepreneur. This is further supported by the Commission's work concerning the EU-US Transportation Security Group and the subsequent progression of the work towards a one-stop security agreement between the two.

The 2011 annual report on the implementation of Regulation (EC) No 300/2008 on common rules in the field of civil aviation security was published in July 2012 and covers the period of 1 January to 31 December 2011. As with previous reports the first part is concerned with the Commission's compliance monitoring activities. Also in keeping with previous reports very little detail is given. Ten appropriate authorities were inspected, the 'deficiencies most commonly found in 2011 were similar to those in 2010' (European Commission, 2012: 2). Again there was evidence of the inability to detect and correct failings swiftly in some Member States, showing the situation to be much the same as it was the previous year. Twenty-four inspection files remained open at the end of 2011 and whilst there was no activation of Article 15 during 2011, two infringement proceedings were initiated. Nineteen airport inspections were conducted with five follow-up inspections being deemed necessary, and once again the deficiencies listed in the report are the same as those listed in previous reports. As none of the Commission's reports have provided sufficient detail to identify which airports were inspected, it is not possible to ascertain whether those which form the basis of one report have also been included in a previous report or even whether inspections within a territory were concerned with the national appropriate authority or an airport. As such, it is not possible to determine whether the recurring deficiencies and weaknesses are repeatedly happening at particular locations. Conversely, it is also not possible to identify whether the weaknesses or deficiencies identified at a particular location during one year have been subject to inspection in later years and have been found to be resolved. The portion of the Commission's reports concerned with the

inspection process do not therefore provide sufficient detail to ascertain whether there has been any specific improvement in compliance year on year. Furthermore, the reports do not even allow for a realistic appraisal of the level of compliance during a specific period. This would require that each of the Member States be inspected every year – both the national appropriate authority and specific airports within that territory.

The shortcomings of the Commission's inspection programme does not, however, negate the importance of its role as an actor in aviation security. In addition to the various trials and studies mentioned in previous reports, a new study was begun in 2011 concerning the impact of the new security rules for inbound cargo. This spill-over not only further demonstrates the strength of the EU's response to the focusing event that was the Yemen print cartridges incident of 2010, but also the continuing spill-over to facilitation. The work with both the international bodies and third countries as outlined in the 2011 report is the same as that detailed in the 2010 report, further demonstrating the strength of the Commission as a supranational policy entrepreneur.

8-10--Conclusion.

It was established in Chapter **6** that the perceived aim of EU cooperation on aviation security was to create common standards across the EU and, furthermore, to ensure that all Member States implemented these. To this degree the EU has been successful. It has been shown earlier in this chapter, that those involved in EU policy-making consider the main effect of the EU efforts concerning aviation security to be the achievement of the difficult task that is ensuring the harmony of standards across so many different national borders. As it has been shown, those interviewed amongst the industry all agreed that whilst the EU has achieved legislative homogenisation it sought, this has not equated to complete perfect standardisation of all aviation security matters across the entire EU. Nor is it likely that it ever will as long as each sovereign nation has the right to chose to go above

and beyond, and the capabilities to do so combined with differing perceptions resulting from unique histories. It is the view of this thesis that when evaluating the effects of EU involvement in aviation security one should focus on the successful establishment of a common baseline. Furthermore, it should prioritise the consideration of the successful enforcement of the legislated requirements over and above the technical and/or procedural discrepancies to be found among Member States at a practical level.

The purpose of Regulation (EC) No 2320/2002 was to establish common basic standards for civil aviation security, however, due to the content of Regulation (EC) No 2320/2002 the scope of EU involvement in aviation security was limited to commercial aviation. When Regulation (EC) No 2320/2002 was repealed by Regulation (EC) No 300/2008, the distinction between commercial aviation and general aviation was removed in favour of that between civil and military, expanding the scope of EU policy on aviation security to include all of civil aviation. Regulation (EC) No 1254/2009, however, allows Member States to derogate from the EU common basic standards and adopt alternative measures in all instances of general aviation thus placing it under the purview of the Member State. The extent of the scope of the EU's common basic standards on aviation security that is wholly and equally applicable to all Member States is therefore solely limited to commercial aviation.

Furthermore the EU's achievements in aviation security beyond the aim of its involvement can be seen from its involvement in facilitation. Chapter **5** demonstrated the inter-related nature of the two areas which explains the spill-over from aviation security into this area as evidenced by: Regulation (EC) No 1546/2006, Regulation (EC) No 300/2008, Regulation (EC) No 820/2008, Regulation (EC) No 483/2009, Regulation (EU) No 133/2010, Regulation (EU) No 134/2010, Regulation (EU) No 185/2010, Regulation (EU) No 293/2010, Regulation (EU) No 297/2010, Regulation (EU) No 334/2011, Regulation (EU) No 720/2011 and Regulation (EU) No 859/2011.

The aim of the EU's involvement in aviation security was the creation of a common basic standard which was to be applicable across the EU. The policy, however, shows that the EU not only achieved this, but again succeeded beyond its aim. Upon it becoming involved in aviation security, the EU had no recognised place in the established international system. It was dependent on the Member States for representation with both the international organisations and other countries. The EU, however, created numerous bilateral agreements and established relationships in aviation security with various third countries as can be seen from: Regulation (EC) No 1477/2007, Regulation (EC) No 300/2008, Regulation (EC) No 483/2009, Regulation (EU) No 133/2010, Regulation (EU) No 134/2010, Regulation (EU) No 293/2010, Regulation (EU) No 358/2010 and Regulation (EU) No 859/2011.

Another strength of the EU demonstrated by the policy is the acknowledging of both the importance of intelligence in countering threats and also the interconnected nature of aviation and therefore the necessity of cooperation. This cooperation is required in more instances than just between states and international organisations. Successful regulation of aviation security requires government to establish and maintain good relations with the industry. The policy demonstrates that the EU has achieved this with the inclusion of SAGAS in Regulation (EC) No 300/2008. The legislation shows the EU recognises the wider importance of the aviation industry, that it is not just a favoured mode of transport. Aviation security should, therefore, be concerned with more than airports screening passengers and their baggage. The change of scope seen in Regulation (EC) No 300/2008 as well as subsequent policies to include entity security programmes and the subsequent inspections is not only proof of the EU's understanding of aviation security but it's ability to competently legislate the substance of it.

Not only does the policy show that facilitation is a concern, but that it is, in fact, a focus of the EU when drafting new policies on aviation security. The revision of previous policies to correct elements of them that were detrimental to facilitation further evidences this commitment. Acknowledging the inter-linked nature of the two areas and propagating their related success is further demonstration of the

positive results of EU involvement in aviation security. It is not just in regard to facilitation that the EU can be seen to have taken such a forward thinking approach to policy-making. A further strength of the EU's efforts in aviation security evidenced in Regulation (EC) No 300/2008 and subsequent policies is that the policy shows the EU has considered the potential implications of the Regulations in order to mitigate any implementation problems that may result from them. This is further supported by the policy when one considers the clearly demonstrated commitment to technical evolution. More specifically this is evidenced through the repeated requirement that new technologies be phased in to ensure the legislation is implementable.

Whilst this chapter has frequently determined that over the time period in question the EU was learning from experience and using it to shape future policies, which is undeniably positive, the time being taken to learn these lessons unfortunately had a significant negative impact on EU aviation security. There are numerous aspects of the policy demonstrating this. A prominent example is that a fundamental and basic aspect of access control did not feature in the policy until 2009 meaning that it had been overlooked for eight years.

The legislation has shown the questionability of the EU's competency to mandate adequate aviation security standards within its own borders. This thesis is not suggesting that the EU is unable to be a successful actor in aviation security. Rather it is simply acknowledging a significant weakness as evidenced by the policy, that of inconsistency. The review of the policy output has determined that one of the primary causes for this is the speed with which the EU has introduced aviation security policy. In many instances, it appeared that timely legislating has taken priority over careful consideration, resulting in rash regulations that impact on the thoroughness of the policy and damaging the worthiness of it. The most notable aspect of this concerns the respective roles of the EU and the Member States and thus the relationship between them. The level of autonomy afforded to the Member States and the areas in which this occurs has repeatedly changed, almost being altered with each successive Regulation. Moreover, the policy has shown the

EU's view of the appropriate relationship between it and the Member States to have gone from one of cooperation and almost partnership to executive control and back again. In order to be a strong and successful international regulator of aviation security, the EU must first determine what it considers its role and that of the Member States to be and then to consistently adhere to this. Most importantly however it needs to be clearly defined and maintained, for if the EU cannot determine the role it plays with regard to its own Member States, then it will not successfully be able to determine its role with regard to third countries.

As previously acknowledged the commitment to third country equivalence shown throughout the legislation demonstrates one of the greatest strengths of the EU as an actor in aviation security. This strength is not however immune to vulnerability. Due to the territorial nature of legal jurisdiction, EU legislated aviation security standards are only applicable to those operators of its Member States i.e. airports within the Community, and airlines and entities that are registered in the EU. EU Regulations have no power over third countries and their airports, nor can the EU dictate what happens onboard an aircraft of a foreign airline. The EU, therefore, cannot guarantee the security standards of all aircraft within its airspace and thus is unable to fully control the level of aviation security within its borders. Unless the EU can ensure the equivalence of EU common standards in all third countries, it will always be susceptible to the inter-connected nature of aviation.

9--Conclusion.

This thesis has focused on a particular aspect of the expansion of the EU's counter-terrorism activities, namely aviation security. Prior to 9/11, aviation security operated on a two-tier structure. SaRPs were set by the international organisations of the industry and were implemented by the national governments. In the wake of the focusing event that was 9/11 the EU begun involvement in aviation security, adding a supranational dimension to the previously inter-governmental system. Given the globally inter-linked nature of aviation security, however, the effects of EU involvement were not constrained to aviation security within its Member States. The purpose of the thesis was to analyse EU involvement in aviation security. This was specifically to assess the cause and effects, both internal and external, of this occurrence. This was in order to answer the research question: **To what extent has EU involvement in aviation security occurred as a result of 9/11 and what effects has this had?** In order to do so the thesis required that the following six sub-questions be answered, these are:

1. Where does the EU fit in the established aviation security system?
2. Why did the EU get involved in aviation security?
3. What did the EU set out to achieve by way of this involvement?
4. What has the EU achieved as a result of this involvement?
5. What areas does this involvement not cover?
6. How has this involvement affected aviation security outside the EU?

This was achieved through examining all EU legislation produced on aviation security within the first decade of involvement, the analysis of official evaluation reports, and the consultation of both policy-makers and practitioners.

The analysis required to answer the research question provided the thesis with a number of aims. First, it was necessary to demonstrate the significance of this involvement by illustrating certain key concepts. As this thesis has shown these are the primary complexities of aviation security which are two-fold. First is concerning the subject matter of aviation security both in terms of content and operationalisation. Second and most significant is in regard to the global nature of aviation security and thus the regulation and development of it. This was in order to

depict not only what the EU had chosen to become involved in, but also the inherent limitations on the extent of this involvement as well as the resulting implications of it. Second, the thesis needed to examine the origins of the EU's involvement. This was in order to ascertain both the contributing factors and the key players behind this development. In order to create a criteria for analysis - having determined the 'when', 'why' and 'who', it was necessary to identify the 'what for'. This is essentially what the EU set out to achieve in becoming involved in aviation security. Third, the thesis was required to investigate the effects of EU involvement in aviation security.

Given the wide field this thesis is located within, the thesis has made an original contribution to numerous areas of the existing scholarly literature. First, it has significantly widened the scope of the field of literature concerned with aviation security. Previously this field tended to have a three-fold focus. First, the practical and technical aspects of aviation security Second, aviation security in individual countries – most often the USA. Third, the history of aviation security – the threat it faces and the response of the international organisations involved in it First, this thesis, by considering the development of aviation security in the EU, has not only added to these existing areas individually but also in conjunction with one another. Furthermore, it has not only identified a gap in the existing literature but has also provided something with which to fill it. Second, this thesis expands and builds upon that of the field of EU counter-terrorism through the consideration of the EU's involvement in aviation security. The thesis has contributed to those works that consider the issue of both the effect of 9/11 on the political remit of the EU and the subject matter of this expanded remit. Third, the thesis has also made a contribution to the field of EU political science through its consideration of the role of the Commission in driving integration in this area. Within this area of the literature the thesis specifically adds to the discourse on the Commission as a supranational policy entrepreneur.

Through the examination of the available literature, this thesis found there to be a noticeable gap. There are very few scholarly works on the subject of EU aviation

security. This thesis was concerned with the role of the EU in aviation security. This research has focused on the EU's creation and development of aviation security as a political competence. It has identified the various effects of this involvement on aviation security both internally and externally. Primarily this is the issue of instigating supranational control over a number of countries in a global field which previously had been regulated through voluntary international agreements. More specifically the challenges of doing so in a field in which the subject matter is not only technically complex but historically has been inextricably linked to sovereignty and nationally has varying degrees of importance afforded to it due to differing perspectives, threat levels and experiences. It was noted that there was a very apparent lack of research on this subject and, that due to this absence, there were various areas not covered by the literature. The findings of this research relate to the academic study of aviation security by filling this EU-centric gap. The thesis relates to broader developments on EU aviation security by offering insights on numerous issues not previously considered. These include: where the EU is or should be located within the wider system of aviation security, the relationship between the EU and the various international organisations, an over-arching examination of EU legislative efforts in aviation security, and the external effects resulting from the product of this involvement. Furthermore, the findings of this research also relate to the broader literature on EU politics through extensive study of an area of EU counter-terrorism not previously considered in detail, and through the examination of the Commission as an SPE.

This thesis has demonstrated that aviation security both by way of its very creation and also continually through its subsequent evolution, is reactive in nature. It has been shown in explanation of this that in the absence of unequivocal provocation resulting from public opinion in the aftermath of fatal attacks, the industry has historically had a tendency to favour profit and thus increased national revenue over costly security measures. The evolution of aviation security has been guided and regulated by international organisations which are constrained by having to set standards at the LCD as a result of the sheer diversity, both economically and technically, of their Member States. These organisations have an additional

inherent weakness, which is that they lack the power of enforcement and have to rely on the national organs of the individual states to ensure implementation. When combined these factors can potentially have a significant negative impact on the level of aviation security. This fact was exploited by the perpetrators of the 9/11 attacks, demonstrating not only the need for high standards of aviation security but also its global nature and thus the magnitude of the consequences of these standards not being met.

It has been shown that the 9/11 attacks were the undoubtedly reason for the instigation of the EU's efforts in aviation security. Furthermore, that this occurred at the behest of the Member States, all of whom were in agreement that EU involvement was now necessary. However, as the EU previously had no experience in aviation security, the decision was to follow in the footsteps of those who did with the aim of building on this. This thesis has shown this aim to be establishing the harmonisation of aviation security across the EU through the creation of EU common basic standards. Given the complexities inherent in dealing with such a technical area without experience and thus the requisite subject knowledge, the EU's initial focus was narrowed to the most pertinent area of the field yet deep enough to have an impact. The thesis has shown that EU involvement in aviation security during the period in question was thus solely concerned with the area of airport security – in essence the front line of aviation security and the area in which failings are both most detrimental and also common.

Initially EU involvement made no change to the measures aviation security consisted of – EU efforts were in fact an exact reproduction of the existing common basic standards. The effect of EU involvement was that these recommendations to which previously adherence was voluntary, were now the subject of legislation and thus compliance was now mandatory. Voluntary agreements do not, however, successfully transmogrify into binding regulations simply by attempting to change the strength of the text through the use of more forceful auxiliary verbs. As a result of this, the EU learnt firsthand one of the main tenets of aviation security – implementation is key. The EU's first foray into legislating aviation security was soon

found to be fraught with problems and as such underwent numerous revisions before being repealed and replaced. Subsequent efforts were a marked improvement, yet the continually expanding nature of aviation security as well as the innovation of terrorist acts of unlawful interference and the EU's geo-political alterations both internally and externally meant these too were subject to regular amendment. Furthermore, the thesis has shown that in addition to achieving the aim of creating common basic standards the EU has surpassed its antecedents in effectively ensuring the implementation of these common basic standards through its focus on compliance monitoring.

Chapter **6** found that before September 2001 the EU was not involved in aviation security – that it considered it to be a national competence as a matter of sovereignty. The extent of 9/11 changed many preconceived views including this one. In the aftermath of the attacks, Member States sought EU attention to the issue. At the emergency meeting on the Council held on the 14 September 2001 a consensus was reached that all possible methods of strengthening aviation security needed to be exhausted. Specifically, that it was now necessary for the EU to become involved – that there should be action at the Community level. The specific events of 9/11 highlighted the technical nature of aviation security. As such, therefore, both the EP and the Council supported the Commission taking the lead in developing the new competence. Also resulting from this was the location of EU aviation security efforts within transport rather than counter-terrorism.

With regards to how EU aviation security functions, it is mainly the work of transport officials from the Commission, albeit in cooperation with counter-terrorism officials. Chapter **6** also considered the relationship between the EU and the industry from both perspectives. Both sides held to the same view that cooperation between policy-makers and industry is vital for strong EU aviation security. This is mainly attributed to the different levels of experience and thus the required technical knowledge. A difference of opinion, which Chapter **6** showed to be apparent, was concerned with the issue of the cost of security. Policy-makers tend to assume the industry is criticising aspects of policy on economic grounds –

simply to preserve profit margins, whereas one of the industry's main criticisms is that the economic cost of a policy renders it inoperable. Both parties are however in agreement that legislation must be implementable. The EU's initial modus operandi in legislating aviation security has been shown to be the creation of common basic standards.

Chapter **7** established that the period for evaluation was the first decade of involvement, beginning on 11 September 2001. It was determined that EU efforts in aviation security would be evaluated against the aim of its involvement – the creation of common basic standards. In short, to ensure that in all matters of aviation security, all EU Member States conformed to a single set of rules. In order to ascertain whether or not the EU achieved its aim, the chapter was required to examine three issues, namely (1) whether criteria for aviation security have been established by the EU; (2) whether these criteria are sufficient to safeguard aviation against acts of unlawful interference, and (3) importantly, the extent to which said criteria are truly applicable. EU common basic standards on aviation security were established with the passing of Regulation (EC) No 2320/2002. The specific content of this was laid down in an Annex which contained ECAC's Doc 30 – its current recommendations on aviation security. This was internationally recognised and approved as a sufficient level of security. Chapter **7** highlighted a prominent weakness of EU involvement in aviation security - its lack of experience in the field. This is the direct cause of the many problems associated with the implementation of Regulation (EC) No 2320/2002. All of which can be attributed to the almost verbatim reproduction of Doc 30 – the attempt to magically transform recommendations into requirements.

This did not however diminish the EU's achievement in passing Regulation (EC) No 23202/2002. This achievement was succeeding where others had previously failed – by making the common basic standards legally binding, the EU thus had the power to enforce them. In order to ensure the implementation of the standards it contained, Regulation (EC) No 2320 also included provisions for compliance monitoring. Chapter **7** determined that the EU did succeed in achieving the aim of

its involvement in aviation security by way of the creation of common basic standards. Furthermore, the EU surpassed this aim with the passing of Regulation (EC) No 622/2003 and the subsequent legislation amending and replacing it. This was through legislating the measures for the implementation of common basic standards rather than simply the common basic standards themselves. This achievement was further expanded by legislating the exact methods through which the measures for implementing the common basic standards were to be enacted, through Regulation (EC) No 272/2009. The thesis has illustrated the implications of the fact that no legislation is self enacting and thus the importance of implementation. This further demonstrates the assessment made in Chapter **7** that, by including compliance monitoring in Regulation (EC) No 2320/2002, the EU ensured the implementation of the common basic standards. This is one of the biggest problems that the international organisations have faced, meaning the EU has countered one of the biggest obstacles to successful international regulation of aviation security. Whilst common basic standards are, by their very nature, the necessary measures, wherever they have existed so has the right to derogate from them, the allowance to go over and above. Therefore whilst the EU has indeed achieved its aim in creating EU common basic standards, Chapter **7** has shown that it has not achieved the total harmonisation of aviation security across the EU.

Chapters **6** and **7** showed that, with the passing of Regulation (EC) No 2320/2002, the EU achieved its aim of legislating common basic standards but that these did not cover all of civil aviation security. Rather the scope of EU involvement in aviation security as defined by Regulation (EC) No 2320/2002 was limited to commercial aviation. Regulation (EC) No 300/2208 appeared to rectify this limitation by removing the distinction between general and commercial aviation thus expanding the content of the common basic standards to cover all of civil aviation. Chapter **8** however further reinforces the finding of Chapter **7** with regards to the effect of Member States right to go above and beyond on the achievement of true harmonisation. It has shown that Regulation (EC) No 1254/2009 allows for the derogation from EU standards in favour of alternative matters thus making general aviation a matter for the Member States. Compliance with EU common basic

standards is mandatory only in the case of commercial aviation. This does not, however, mean that EU involvement in aviation security has had no effect on general aviation. Whilst EU efforts have not covered general aviation in making it a matter for Member States, the EU has brought attention to the issue. Chapter **8** has also identified that another notable effect of EU involvement in aviation security is that it has resulted in EU involvement in facilitation.

The most notable finding of Chapter **8** is the fluidity of the development of EU aviation security policy – which is far superior to that of the various international organisations. Specifically that the level of aviation security within the EU is now far significantly increased to that prior to EU involvement. Upon EU involvement in aviation security the EU was dependent on the representation of Member States both with the international organisations and with other countries. EU efforts in legislating aviation security have caused the development of the relationship between the Commission and the aviation industry. This has knock-on effects both internally and externally. Firstly, the potential for better relations between the industry and the individual governments of the Member States. Secondly, influence by example on relations between government and industry internationally. Chapter **8** has further shown the external dimension of EU involvement in aviation security through the identification of the establishing of additional relationships. The effect of which, achieved through bilateral agreements regarding third country equivalence, has been to instigate EU common basic standards outside the borders of the EU. In many cases, the effect of this has been to increase the level of aviation security.

The research detailed in this thesis does, however, have limitations. The first is the issue of currency. It was necessary to define an end-point for the data to be analysed forcing the research to be historic in perspective. Furthermore, due to the sensitive nature of the subject and in order to obtain the necessary data, this end-point had to be suitably removed from the now. However, even if the thesis had been written based on data detailing the situation at the very time of submission currency could not have been guaranteed. Due to the fluidity of aviation security

specifically the exponential nature of its development, usually in response to impetus provided by unforeseen events, there is the all too real potential for any treatise on the subject to become outdated almost instantaneously.

In addition to the matter of currency, the issue of source material imposed another limitation on the research. This is the availability of it due to the sensitive nature of the subject matter. Whilst the EU's commitment to transparency requires all legislation to be open-source, a number of policies contained measures laid down in unpublished annexes understandably restricted for security reasons. Also, apart from the regulations themselves, there is very little in terms of useful policy documents concerning aviation security available in the public domain. The issue of secrecy not only occurred in attempting to obtain documents. The sensitive nature of the subject matter was the single biggest limitation regarding the conducting of interviews. Only approximately a fifth of interview requests achieved a response, and the percentage of interviews actually granted is closer to fifteen. Even amongst those that were, the perception of how seriously the sensitive nature of the subject is taken by those involved was apparent from the various conditions placed on the interviews in some instances. These covered: anonymity of interviewees, confidentiality of organisational intellectual property, restrictions concerning acceptable usage of the data obtained and thorough examination of the interviewer against strict criteria prior to access being granted.

The most notable limitation of study is the sheer complexity of the central concept this thesis is concerned with – aviation security. In order to able to cover the full breadth of the subject matter to a significant depth, such a study would require time and resources not commensurate with that of a single authored PhD research project.

EU efforts in aviation security have, to date, been limited to commercial aviation with a primary focus on the area of airport security. As a result, this thesis focuses on the specific area of aviation security in which the EU has invested its efforts so far. This does, however, create a vast array of potential for further research. This

thesis could be built upon by a deeper study of any of the individual findings, individual standards or specific measures the EU has introduced, the new threats that emerged during the time period this thesis has considered and the exact response to them, the subject matter of EU technical trials such as LAGs screening methodologies, EU involvement in facilitation, the EU's compliance monitoring program, and the true level of harmonisation determined by specific examples of Member States invocation of the right to derogate and the resulting measures. As well as opportunities for narrowing the focus of this thesis, the research could also be built upon by a wider study. Examples of such include but are not limited to: the particulars of the relationship between the EU and the various international organisations and third countries; comparative studies of EU legislative efforts to those of third countries; assessment of the level and extent of third country equivalence; and comparative studies of the regulation and implementation processes of third countries. The research could also be built upon by studies focusing on the various areas not covered by this thesis – the extent of EU efforts in areas of aviation security other than airport security.

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List of Interviews.

	Date	Method	Name	Organisation
INT1	7 June 2011	Meeting	An Official	Commission
INT2	10 June 2011	Meeting	An Official	Commission
INT3	14 June 2011	Meeting	An Official	Commission
INT4	15 June 2011	Meeting	Mr Radoslaw Olsewski	Commission DG-HOME
INT5	16 June 2011	Meeting	An Official	Council
INT6	16 June 2011	Meeting	---	---
INT7	17 June 2011	Meeting	An Official	Commission
INT8	21 June 2011	Meeting	An Official	Council
INT9	21 June 2011	Meeting	An Official	ACI-Europe
INT10	22 June 2011	Meeting	Mr Brian Simpson	Parliament
INT11	24 June 2011	Meeting	Mr Daniel Calleja	Commission DG-ENT
INT12	27 June 2011	Meeting	An Official	ECA
INT13	27 June 2011	Email	An Official	Government Non-EU (ECAC MS)
INT14	28 June 2011	Meeting	An Official	Council
INT15	29 June 2011	Meeting	An Official	ECAC
INT16	29 June 2011	Meeting	An Official	A MS Government
INT17	30 June 2011	Meeting	An Official	EOS
INT18	30 June 2011	Meeting	An Official	Commission
INT19	30 June 2011	Meeting	An Official	A MS Government
INT20	30 June 2011	Meeting	An Official	A MS Government
INT21	12 July 2011	Telephone	Mr Urs Haldimann	ECAC
INT22	13 July 2011	Meeting	An Official	Commission
INT23	18 July 2011	Meeting	An Official	ECAC
INT24	19 July 2011	Meeting	---	---